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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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'08 CV 1561 H NLS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARMAN LASSITER, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

COXCOM, INC., and DOES 1 to 50,

Defendants.

Case No.

NOTICE OF REMOVAL

**[CLASS ACTION FAIRNESS ACT
OF 2005]**

[DECLARATIONS OF SHARON SMITH,
LINDA KAVANAUGH, TERRI WILSON,
JOSEPH FREEMAN AND CHRISTOPHER
Q. BRITTON IN SUPPORT FILED
CONCURRENTLY UNDER SEPARATE
COVER]

**TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA AND TO PLAINTIFF ARMAN LASSITER AND HIS ATTORNEY OF
RECORD:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1441 and 1446, Defendant
CoxCom Inc., hereby removes the above-captioned action from the Superior Court of the State of

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1 California, in and for the County of San Diego, to the United States District Court, Southern District
 2 of California. CoxCom asserts that original federal jurisdiction exists under the Class Action
 3 Fairness Act of 2005 (28 U.S.C. § 1332(d)) as follows:

4 **PROCEDURAL BACKGROUND**

5 1. On May 23, 2008, Plaintiff Arman Lassiter, purportedly on behalf of himself and all
 6 others similarly situated, filed a complaint for Legal and/or Equitable Relief (the "Complaint") in
 7 Superior Court of the State of California, in and for the County of San Diego, Case
 8 No. 37-2008-00084510-CU-OE-CTL (the "State Court Action"). Plaintiff filed the case as a putative
 9 class action. A true and correct copy of the Complaint is Exhibit A.¹

10 2. Plaintiff asserts claims for relief in the State Court Action against CoxCom for
 11 violations of the California Labor Code, including (1) violations of Labor Code § 226.7(a) by failing
 12 to provide meal and rest breaks, (2) Labor Code § 226 by failing to provide accurate itemized wage
 13 statements, (3) Labor Code § 802 by failing to indemnify employees for necessary expenditures or
 14 losses incurred in the discharge of the employees duties, (4) violations of Overtime Pay laws and
 15 regulations by improperly "rounding" hours worked by employees. Plaintiff further claims these
 16 practices constitute Unfair Competition in violation of Business and Professions Code §§ 17200 *et*
 17 *seq.*

18 3. Plaintiff claims that the State Court Action is appropriate for class treatment because
 19 "statistically, one hundred percent" of the class members are or were subject to the alleged improper
 20 labor practices. (Complaint, ¶ 14.)

21 4. CoxCom answered the State Court Action on August 14, 2008. A true and correct
 22 copy of the Answer is Exhibit B.

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 28 ¹ All exhibits to this Notice are included under separate cover filed herewith.

1 **TIMELINESS OF REMOVAL**

2 5. CoxCom has never been properly served with the Complaint in the State Court Action,
3 and thus this petition is timely within the meaning of 28 U.S.C. § 1446(b).² *Thomason v. Republic*
4 *Insurance Company*, 630 F.Supp. 331, 334 (E.D. CA, 1986).

5 6. Via a letter from Plaintiff's counsel, Alison Miceli, dated August 4, 2008, CoxCom
6 first learned that Plaintiff purported to have served the Complaint on CoxCom's agent for service of
7 process, Corporation Services Company ("CSC"). Plaintiff threatened to seek the default of CoxCom
8 if CoxCom did not answer the complaint within four days of receiving the letter.³ Exhibit 1 to the
9 Declaration of Joseph Freeman in Support of Petition for Removal (Exhibit G) is a true and correct
10 copy of Ms. Miceli's August 4, 2008 letter.

11 7. The August 4th letter asserted that this service occurred on June 27, 2008. The Proof
12 of Service found in the Superior Court's files in this action states that Plaintiff's Counsel, William
13 Sullivan, personally served the Complaint and related papers on CoxCom's Agent for Service of
14 Process, CSC, at CSC's offices in Sacramento, California. Notwithstanding the foregoing assertions
15 of Plaintiff's counsel, CoxCom has never been served with either the summons or complaint in this
16 case.

17 8. CSC denies that it received this service. In order to protect CoxCom's rights in this
18 matter, CoxCom has filed a motion to quash service in the State Court Action, claiming inadequacy
19 of service under California Code of Civil Procedure § 481.10. A true and correct copy of this motion,
20 the supporting Memorandum, Notice of Lodgment and supporting declarations, which are exhibits

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25 ² 28 U.S.C § 1446 provides that a Notice of Removal must include copies of all "process,
26 pleadings, and orders served upon defendant." Defendant CoxCom maintains that no papers have
27 been properly served on it, but Exhibits A, B, and C to this Notice contain all the process, pleadings
and orders contained in the Superior Court file in this matter.

28 ³ Declaration of Joseph Freeman in Support of Petition For Removal ("Freeman Dec.") Ex. G, p.
75, ¶ 3.

1 thereto, are Exhibit C to this Notice and are hereby incorporated into this Notice by this reference as
2 if fully rewritten. Briefly summarized, the declarations filed in support of CoxCom's Motion to
3 Quash⁴ describe the procedures whereby Corporation Service Company carefully and systematically
4 reviews all documents served upon it as agent for its customers at least twice, focusing especially on
5 court documents, that thorough reviews of the CSC's records have been conducted yielding no record
6 whatsoever of the filing of a summons and/or complaint in this matter on June 27, 2008 or ever, and
7 that a physical search of the CSC premises has been conducted without
8 finding any summons and/or complaint in this case. These declarations further establish that plaintiff
9 did serve a letter addressed to the California Labor and Workforce Development Agency on June 27,
10 which letter required service by Certified Mail, not personal service, that there is strong reason to
11 believe that plaintiff accidentally served the wrong document on June 27. CoxCom received no
12 notice of service of the summons or complaint until its receipt of plaintiff's counsel's August 4, 2008
13 letter.

14 9. This Motion to Quash was necessary to preserve CoxCom's right to challenge the
15 adequacy of service, because answering the Complaint without filing such a motion would constitute
16 a waiver of the right to challenge service. (Code Civ. Proc. § 481.10(e)). CoxCom's answer to the
17 Complaint includes an affirmative defense that service was improper, which is intended to preserve
18 this claim under Federal Rule of Civil Procedure 12(b)(4).

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27 ⁴ See Declarations of Becky DeGeorge, Brenda Sharpless, Steven Cassidy, Victoria Diamond,
28 Joseph Freeman and W. Lee Biddle, which are Exhibits G, I, H, J, F and D respectively to the Notice
of Lodgment filed in support of Cox's Motion to Quash, which is itself Exhibit C to this Notice of
Removal, beginning at page 22 of the exhibits.

1 **CLASS ACTION FAIRNESS ACT**

2 10. Basis of Original Jurisdiction. The Court has original jurisdiction of this action under
 3 the Class Action Fairness Act of 2005 (codified in pertinent part at 28 U.S.C. § 1332(d)).
 4 Section 1332(d) provides that a district court shall have original jurisdiction of a class action with 100
 5 or more putative class members in which the matter in controversy, in the aggregate, exceeds the sum
 6 or value of \$5,000,000. As applicable in this matter, section 1332(d) further provides that where the
 7 putative class members are citizens of the state in which the action was filed, the defendant must be a
 8 citizen of a different state.

9 11. As set forth below, pursuant to 28 U.S.C. section 1441(a), CoxCom may remove the
 10 State Court Action to Federal Court under the Class Action Fairness Act of 2005 inasmuch as
 11 (1) members of the putative class are citizens of a state different than CoxCom, (2) the lawsuit is pled
 12 as a class action involving more than 100 putative class members, (3) the matter in controversy, in the
 13 aggregate, exceeds the sum or value of \$5,000,000, exclusive of costs and interest.

14 12. Plaintiff's Citizenship. Plaintiff Arman Lassiter alleges that he is a resident of the
 15 County of San Diego, State of California. (Complaint, § 4.) For diversity purposes, "a person is a
 16 citizen of the state in which he is domiciled." *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088,
 17 1090 (9th Cir. 1983). Residence is prima facie evidence of domicile. *Id.*, *State Farm Mutual Auto*
 18 *Ins. V. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Accordingly, Plaintiff is a citizen of California.

19 13. Defendant's Citizenship. Pursuant to 28 U.S.C. section 1332(c), "a corporation shall
 20 be deemed to be a citizen of any State by which it has been incorporated and of the State where it has
 21 its principal place of business." CoxCom, as alleged in the complaint, is a Delaware corporation.
 22 (Complaint, ¶ 5.) Furthermore, CoxCom's principal place of business is its corporate headquarters
 23 located at 1400 Lake Hearn Drive, Atlanta, Georgia.⁵ Accordingly, Defendant is a citizen of
 24 Delaware and Georgia, but not of California.

25 14. Doe Defendants. Although Plaintiff has also named fictitious defendants "Does 1-50,"
 26 28 U.S.C. section 1441(a) provides, "[f]or the purposes of removal under this chapter, the citizenship
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 28

⁵ Declaration of Sharon Smith in Support of Petition for Removal ("Smith Dec.") Ex. D, p. 68, ¶ 7.

1 of defendants sued under fictitious names shall be disregarded.” (See also *Fristos v. Renolds Metals*
 2 *Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) [unnamed defendants are not required to join in a removal
 3 petition].) Thus, the existence of “Doe” defendants does not deprive the Court of jurisdiction.

4 15. Size of the Class. Plaintiff filed the State Court Action as a class action involving
 5 more than 100 putative class members. Specifically, Plaintiff alleges that there is an “approximately
 6 6000 member class” consisting of “current or former California-based Field Service
 7 Representatives.” (Complaint, ¶ 11.) CoxCom’s own records indicate that over the four-year period
 8 preceding the filing of the Complaint, approximately 1100 different California employees were
 9 classified as Field Service Representatives in the three California markets in which CoxCom
 10 currently operates: San Diego, Orange County and Santa Barbara.⁶ While CoxCom may at the
 11 appropriate time dispute that each is a proper class member with regard to each alleged wrongful act,
 12 Plaintiff’s allegation is that “statistically, one hundred percent of the class members” were subject to
 13 the identified violations. (Complaint, ¶ 15a-d.)

14 16. Amount in Controversy. The Complaint makes no specific statements of the amount
 15 in controversy. Where a specific amount of damages is not alleged in the Complaint, Defendants
 16 must prove by a preponderance of evidence that the amount in controversy element is satisfied.
 17 *Lowdermilk v. U.S. Bank National Ass’n*, 479 F.3d 994, 998 (9th Cir. 2007). As demonstrated below,
 18 the evidence is that more than \$5,000,000 is in controversy:

19 a. Plaintiff’s Own Statements: In pre-filing proceedings in this action, the parties
 20 sought to resolve concerns raised by Plaintiff. In the course of those discussions, Plaintiff outlined
 21 the size of his claim. Specifically, Plaintiff told CoxCom that it faced potential liability of
 22 \$32,801,146.17, not inclusive of costs and attorney fees.⁷ A plaintiff’s settlement demand “is
 23 relevant evidence of the amount in controversy if it appears to reflect a reasonable estimate of the
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25
 26 ⁶ Smith Dec., Ex. D, p. 68 ¶ 3; Declaration of Linda Kavanagh in Support of Petition for Removal
 27 (“Kavanagh Dec.”) Ex. E, p. 71, ¶ 3; Declaration of Terri Wilson in Support of Petition for Removal
 (“Wilson Dec.”) Ex. F, p. 73, ¶ 3.

28 ⁷ See Freeman Dec., Ex. G, p. 75, ¶ 5 and excerpts from mediation brief attached as Exhibit 2
 thereto.

1 plaintiff's claims." (*Cohen v. Petsmart*, 281 F.3d 837, 840 (9th Cir. 2002). (*See also Babasa v.*
 2 *LensCrafters, Inc.*, 498 F.3d 972, 975 (9th Cir. 2007) [finding settlement demand admissible for
 3 purpose of deciding the question of federal jurisdiction].)

4 b. Meal and Rest Period Claims: Plaintiff asserts that 100 percent of class
 5 members were not provided their legally mandated meal and rest periods. (Complaint, ¶ 14a.) The
 6 remedy for this violation is one additional hour of pay for each day a meal or rest period is not
 7 provided. (Cal. Labor Code § 226.7, *Murphy v. Kenneth Cole Productions* 40 Cal.4th 1094, 1099
 8 (2007).) Here, the average hourly pay of California employees occupying the Field Service
 9 Representative position is approximately \$20.52 per hour.⁸ A review of CoxCom's records indicates
 10 that at any one time during the class period, approximately 507 people were employed as Field
 11 Service Representatives.⁹ If Plaintiff asserts that each class member missed just two meal or rest
 12 periods a week, each would be entitled to an additional \$41.04 a week in wages. Based on a
 13 50-week work year, each would receive an additional \$2,052 a year, or \$1,040,346 per year for the
 14 class. Over a four-year period, this totals \$4,161,456, not inclusive of interest.

15 c. Overtime Claims: Plaintiff asserts that 100 percent of class members were
 16 deprived overtime compensation as a result of "rounding" of hours worked. (Complaint, ¶ 15.) If
 17 Plaintiff claims that each class member lost just 15 minutes of compensation a week, each would be
 18 entitled to an additional \$7.70 a week in wages at an overtime rate of \$30.78. Based on a 50-week
 19 work year, each would receive an additional \$384.75 a year, or \$195,068.25 per year for the class,
 20 based on 507 representatives working at any one time. Over a four-year period, this totals
 21 \$780,273.00, not inclusive of interest.

22 d. Waiting Time Penalties Under Labor Code Section 203: Plaintiff claims that
 23 due to the wage violations identified above, CoxCom violated Labor Code section 203, which
 24 requires full payment of wages due upon termination. (Complaint Prayer, ¶ 3.)

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 26
 27 ⁸ This is the un-weighted average of the pay provided field service representatives in Cox's three
 California markets over the four years prior to the complaint. (Smith Dec., Ex. D, p. 68 ¶ 5,
 28 Kavanagh Dec., Ex. E, p. 71, ¶ 5, Wilson Dec., Ex. F., p. 73, ¶ 5)

⁹ Smith Dec., Ex. D, p. 68, ¶ 4, Kavanagh Dec., Ex. E, p. 71, ¶ 4, Wilson Dec., Ex. F, p. 74, ¶ 4.

1 As a penalty, the employee is permitted to recover up to 30 days' pay if the section is violated.
 2 (Complaint Prayer, ¶ 4.) Here, approximately 311 Field Service Representatives voluntarily or
 3 involuntarily left the company in the four years before the filing of the complaint.¹⁰ At the average
 4 hourly wage of \$20.52, or \$164.16 for an eight-hour day, 30 days' pay would equal \$4,924.80 per
 5 employee or total of \$1,531,612.80 among the 311 employees.

6 e. Failure to Provide Itemized Wage Statement: Plaintiff asserts that CoxCom
 7 willfully failed to provide wage statements which complied with the requirements of Labor Code
 8 section 226, and that class members were damaged by this action. (Complaint, ¶ 30) Labor Code
 9 section 226 provides that employees suffering injury as a result of a knowing and intentional failure
 10 to comply may recover up to an aggregate \$4,000. If each employee is able to recover this amount,
 11 the potential amount at issue is \$4,400,000 if the class is the 1100 Field Service Representatives or
 12 \$24,000,000 if the class is 6000 people, as Plaintiff alleges. (Complaint, ¶ 11.)

13 f. Attorney Fees and Costs: In addition to the above amounts, Plaintiff is
 14 proceeding under statutes that would permit him to recover reasonable attorney fees and costs if
 15 successful. (Labor Code §§ 226, 226.7.) Requests for attorney's fees must be taken into account in
 16 ascertaining the amount in controversy. (*See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
 17 Cir. 1998) [claims for statutory attorney's fees to be included in amount in controversy, regardless of
 18 whether award is discretionary or mandatory].) If Plaintiff does expect to recover \$32,801,146.17 in
 19 this action, then it is reasonable to expect that Plaintiff will be seeking additional attorney fees in
 20 excess of \$10,000,000.¹¹

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28 ¹⁰ Smith Dec., Ex. D, p. 68, ¶ 6, Kavanaugh Dec., Ex. E, p. 71, ¶ 6, Wilson Dec., Ex. F, p. 74, ¶ 6.

¹¹ Declaration of Christopher Britton in Support of Removal, Ex. H, p. 81, ¶ 2.

1 g. Sum of Components of Plaintiff's Claims for Damages and Fees: The sum of
2 the amounts of the components of Plaintiff's alleged claims for damages and prospective fees is
3 therefore a range of between \$20,873,342 and \$44,473,342.

4 **CONCLUSION**

5 17. Pursuant to 28 U.S.C. section 1446(d) a copy of this Notice of Removal is being filed
6 with the Clerk of the Superior Court of California, County of San Diego.

7 18. Pursuant to 28 U.S.C section 1446(d) CoxCom is providing written notice to Plaintiff.

8 WHEREFORE, CoxCom hereby removes the action now pending against it in the Superior
9 Court of the State of California, County of San Diego, to this Honorable Court, and requests that this
10 Court retain jurisdiction for all further proceedings.

11
12 DATED: August 22, 2008

FERRIS & BRITTON, APC

13
14 By Christopher Q. Britton
15 Christopher Q. Britton
16 Attorneys for Defendant
COXCOM, INC.

17 SEYFARTH SHAW LLP
18 Thomas Kaufman
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12 Attorneys for Defendant CoxCom, Inc.

13 UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 ARMAN LASSITER, individually, and on behalf
16 of others similarly situated,

17 Plaintiff.

18 vs.

19 COXCOM, INC., and DOES 1 to 50,

20 Defendants.
21

Case No.

**EXHIBITS IN SUPPORT OF
DEFENDANT COXCOM INC.'S NOTICE
OF REMOVAL**

Complaint filed: May 23, 2008

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CASE NO.:

NOTICE OF REMOVAL

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6130	
PLAINTIFF(S) / PETITIONER(S): Arman Lassiter	
DEFENDANT(S) / RESPONDENT(S): Coxcom, Inc.	
LASSITER VS. COXCOM, INC.	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00084510-CU-OE-CTL

Judge: Steven R. Denton

Department: C-73

COMPLAINT/PETITION FILED: 05/23/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12 ARMAN LASSITER, individually and on)
13 behalf of other members of the general public)
14 similarly situated,)

15 Plaintiff,

16 v.

17 COXCOM, INC., a Delaware Corporation;
18 and DOES 1-50, Inclusive,

19 Defendants.

CASE NO. 37-2008-00084510-CU-OE-CTL

CLASS ACTION

COMPLAINT FOR:

1. VIOLATION OF LABOR CODE; and
2. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

20 COMES NOW Plaintiff ARMAN LASSITER, ("Plaintiff"), and alleges for his Complaint as follows:

- 21 1. This Court has jurisdiction over this matter in that all parties are residents of the State of
22 California and the amount in controversy exceeds the statutory minimum limit of this Court.
23 This class action is brought pursuant to section 382 of the Code of Civil Procedure. The
24 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of
25 the Superior Court and will be established according to proof at trial. The monetary damages
26 sought on behalf of each and every member of the class and as aggregate class damages exceed
27 those jurisdictional limits as well. Furthermore, there is no federal question at issue, as Wage and
28 Hour protections and remedies related thereto are based solely on California Law and Statutes,

LASSITER CLASS ACTION COMPLAINT

- 1 including the Labor Code, Civil Code, and Business and Professions Code.
- 2 2. Venue is proper before this Court in that some or all of the events, acts, and happenings as
- 3 alleged herein occurred within the jurisdiction of the above entitled court.
- 4 3. Venue is proper before this Court in that certain wrongful acts which gave rise to Plaintiff's
- 5 injuries occurred in the County of San Diego, State of California.
- 6 4. At all relevant times herein, Plaintiff ARMAN LASSITER was and is an individual residing in
- 7 the County of San Diego, State of California.
- 8 5. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
- 9 Defendant COXCOM, INC. ("Defendant Employer"), was and is a Delaware Corporation doing
- 10 business in the County of San Diego, State of California.
- 11 6. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named
- 12 herein as DOES 1 through 50, inclusive. Accordingly, Plaintiff will seek leave of court to amend
- 13 this Complaint to allege their true names and capacities after the same have been ascertained.
- 14 7. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
- 15 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in
- 16 so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and
- 17 in doing the actions mentioned below, was acting within the course and scope of his or her
- 18 authority as such agent, servant, partner, and employee with the permission and consent of the
- 19 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said Defendants.
- 20 Wherever it is alleged herein that any act or omission was done or committed by any specially
- 21 named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same
- 22 act or omission was also done and committed by each and every Defendant named as a DOE,
- 23 both separately and in concert or conspiracy with the named Defendant or Defendants.
- 24 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
- 25 including DOES 1 through 50, are and at all times herein mentioned were either individuals, sole
- 26 proprietorships, partnerships, registered professionals, corporations, alter egos or other legal
- 27 entities which were licensed to do and/or were doing business in the County of San Diego, State
- 28 of California at all times relevant to the subject matter of this action.

CLASS ACTION ALLEGATIONS

- 1
- 2 9. As more specifically set forth below, Plaintiff is bringing this action on behalf of an ascertainable
- 3 class and a well-defined community of interest among the class members. Code of Civil
- 4 Procedure section 382; Richmond v. Dart Industries, Inc., 29 Cal. 3d 426, 470 (1981).
- 5 Throughout his employment, Plaintiff and his current and former co-workers were and are denied
- 6 mandated relieved Meal and Rest periods, in violation of Labor Code section 512. Defendant
- 7 Employer further failed to provide Plaintiff and his former co-workers one hour of pay at their
- 8 regular rate of pay for each day the Meal and Rest periods were not provided, in violation of
- 9 Labor Code section 226.7. Further, Plaintiff and his current and former co-workers were and are
- 10 required to suffer the taking of earned compensation by Defendant Employer (by and through
- 11 paycheck deductions) for, among other items, lost tools, without reimbursement, in violation of
- 12 Labor Code section 2802. Plaintiff and his current and former co-workers were and are denied
- 13 accurate Itemized Wage Statements, in violation of Labor Code section 226. Plaintiff and his
- 14 current and former co-workers were and are denied full and accurate compensation, due to an
- 15 illegal method of "rounding," by Defendant Employer, of time worked by the class members.
- 16 10. Plaintiff brings this action on the grounds that he and other similarly situated employees
- 17 employed by Employer were and are improperly denied the mandated wages resulting from the
- 18 above-referenced violations. Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319 (2004).
- 19 The class of current and former employees is believed to be approximately Six Thousand (6000)
- 20 employees.
- 21 11. The approximately 6000 member class is ascertainable via their experience as current or former
- 22 California-based Field Service Representatives of Defendant Employer.
- 23 12. The class members share a community of interest and an injury in fact as Defendant Employer
- 24 has violated California compensation laws, depriving the class members money earned by them.
- 25 13. This action involves questions of law and fact common to the class in that Plaintiff is bringing
- 26 this action on behalf of a class of Defendant Employer's current and former employees who were
- 27 and/or are (a) improperly denied mandated meal and rest periods; (b) required to suffer the taking
- 28 of earned compensation by Defendant Employer (by and through paycheck deductions) for,

1 among other items, lost tools, without reimbursement, in violation of Labor Code section 2802;
2 (c) denied accurate Itemized Wage Statements, in violation of California Labor Code section 226;
3 and (d) denied full compensation due to illegal "rounding." The subject matter of this action both
4 as to factual and legal matters is such that there are questions of law and fact common to the class
5 which predominate over questions affecting only individual members, including, among other
6 things the following:

- 7 A. Statistically, one hundred percent of the class members were not "authorized and
8 permitted" to take their legally mandated Meal and Rest periods, and were not provided
9 the legally mandated relieved and off-duty meal and rest breaks or, in the alternative, the
10 one-hour wage required in lieu of such Meal and/or Rest Periods.
- 11 B. Statistically, one hundred percent of the Class Members were required to suffer the taking
12 of earned compensation by Defendant Employer (by and through paycheck deductions)
13 for, among other items, lost or broken tools, without reimbursement, in violation of Labor
14 Code section 2802.
- 15 C. Statistically, one hundred percent of the class members failed to receive compliant
16 "Itemized Wage Statements," as required by Labor Code section 226, in that, among
17 other deficiencies, the "gross wages," and "net wages" were and are incorrect, and some
18 of the applicable hourly rates in effect were and are inaccurate.
- 19 D. Statistically, one hundred percent of the class members were deprived of compensation,
20 including Overtime compensation, via the illegal use, by Defendant Employer, of a
21 "rounding" method of calculating time worked by the class members.
- 22 15. The class on whose behalf the action is brought is so numerous that joinder of all parties
23 individually would be impractical. Plaintiff is bringing this action on behalf of approximately
24 6000 employees of Defendant Employer who share a common or general interest, and it would
25 be impracticable for those employees to bring the action individually. The duties and
26 responsibilities of the class members Plaintiff is representing were similar and comparable. Any
27 variations in job activities between the individual class members are legally insignificant to the
28 issues presented by this action since the central facts remain, to wit, Plaintiff and the other class

- 1 members were improperly denied statutorily mandated meal and rest periods.
- 2 16. Plaintiff's claims in this action are typical of the class Plaintiff is generally representing. Plaintiff
3 and other members in the class were required and instructed by Defendant Employer to perform
4 work during their mandated Meal and Rest periods and were not provided the mandated relieved
5 and off-duty meal and rest breaks. Defendant Employer further failed to provide Plaintiff and
6 other members in his class one hour of pay at their regular rate of pay for each day the Meal and
7 Rest periods were not provided, in violation of Labor Code section 226.7. Plaintiff seeks proper
8 compensation and restitution on behalf of himself and other members in the class for the
9 foregoing irregularities.
- 10 17. Plaintiff can fairly and adequately protect the interests of all the members of the class he is
11 representing in this action. Plaintiff's experience and knowledge of Defendant Employer's Wage
12 and Hour practices and its policy regarding Meal and Rest periods, in addition to Plaintiff's
13 familiarity with the job duties of the class members he is representing, entitle him to adequately
14 and fairly represent the class.
- 15 18. Plaintiff has satisfied the three prong "community of interest" requirement in Code of Civil
16 Procedure section 382. Specifically, and as set forth above, (a) this action involves predominant
17 common questions of law or fact in that Plaintiff brings this action on behalf of the approximately
18 600 member class who was denied mandated relieved meal and rest periods and required wages
19 under Labor Code section 226.7 and Title 8, California Code of Regulations, also known as
20 "Wage Order 11," and therefore, like Plaintiff, were improperly compensated; (b) Plaintiff's
21 claims and damages are typical of the class Plaintiff represents in that, as mentioned above,
22 Plaintiff seeks, on behalf of himself and the class members he represents, monetary damages for
23 (1) improperly denied mandated meal and rest periods; (2) being required to suffer the taking of
24 earned compensation by Defendant Employer (by and through paycheck deductions) for, among
25 other items, lost tools, without reimbursement; (3) being denied accurate Itemized Wage
26 Statements, in violation of Labor Code section 226; and (4) being denied full and accurate
27 compensation due to an illegal "rounding" method of calculating time worked. Plaintiff's
28 experience and knowledge of Defendant Employer's Wage and Hour practices and its policy

1 regarding meal and rest periods, in addition to Plaintiff's familiarity with the job duties of the
 2 class members he is representing, entitle him to adequately and fairly represent the class.

3 **FACTUAL BACKGROUND**

- 4 19. In or about 1996, Plaintiff commenced working for Defendant Employer as a Field Service
 5 Representative. Throughout his employment with Defendant Employer, Plaintiff has performed
 6 his job in a capable and competent manner, and has been commended for doing so.
- 7 20. Throughout the term of his employ, Plaintiff and other members in his class were and are
 8 currently (a) required and instructed by Defendant Employer to perform work during their
 9 mandated Meal and Rest periods and were and are therefore not provided the mandated relieved
 10 and off-duty meal and rest breaks, in violation of Labor Code sections 512 and 226.7 and Title
 11 8, California Code of Regulations, also known as "Wage Order 11." Plaintiff and other members
 12 in his class were not provided one hour of pay at their regular rate of pay for each day the Meal
 13 and Rest period was not provided, in violation of Labor Code section 226.7; (b) required to suffer
 14 the taking of earned compensation by Defendant Employer (by and through paycheck deductions)
 15 for, among other items, lost tools, without reimbursement; (c) denied accurate Itemized Wage
 16 Statements, in violation of Labor Code section 226; and (d) denied full and accurate
 17 compensation due to an illegal "rounding" method of calculating time worked.

18 19 **FIRST CAUSE OF ACTION** 20 **Violation of Labor Code - Class Action** **(By The Class Against Defendant Employer and DOES 1-10)**

- 21 21. Plaintiff hereby incorporates by reference paragraphs 1 through 20 above, as though fully set
 22 forth herein.
- 23 22. Labor Code section 226.7(a) states that "No employer shall require any employee to work during
 24 any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."
- 25 23. Under applicable state law, employees who work more than five (5) hours a day are entitled to
 26 a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30)
 27 minutes, if they work more than ten (10) hours in a day. Labor Code section 512(a).
- 28 24. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal

1 period shall be considered an "on duty" meal period and counted as time worked. Title 8,
2 California Code of Regulations, also known as "Wage Order 11."

3 25. An employer who fails to provide meal or rest periods as required by an applicable Wage Order
4 must pay the employee one additional hour of pay at the employee's regular rate of pay for each
5 workday that the meal or rest period was not provided. Labor Code section 226.7(b); IWC Wage
6 Orders 1-2001 through 13-2001, 15-2001.

7 26. During the course of his employment, Plaintiff and other employees were required by Defendant
8 Employer to work through their lunches and perform work during their Meal and Rest periods,
9 and therefore, Plaintiff and other members in his class were denied relieved and off-duty meal
10 and rest periods.

11 27. Defendant Employer willfully failed and refused to pay Plaintiff and other employees one
12 additional hour of pay at their regular rate of pay for each workday that a meal or rest period was
13 not provided as required by Labor Code section 226.7.

14 28. Labor Code section 226 states, in part, that each pay period, Defendant Employer shall provide
15 its employees an accurate Itemized Wage Statement, showing (in part) the gross wages earned
16 and the net wages earned by each employee, and shall provide an accurate representation of all
17 of the applicable hourly rates worked by the subject employees. Defendant Employer failed to
18 provide accurate Itemized Wage Statements. Finally, Labor Code section 2802, and subsequent
19 California law defining this section, require that an employer indemnify its employees for all
20 necessary expenditures or losses incurred during the discharge of the employees' duties.
21 Throughout the term of his employ, Plaintiff and the remaining Class Members have been denied
22 these fundamental legal rights, and monies properly earned by said Class Members have not been
23 paid, or have been deducted from their paychecks in violation of this legal right.

24 29. During the course of his employment, Plaintiff and other employees were not provided statutorily
25 compliant Itemized Wage Statements by Defendant Employer.

26 30. As a direct result of Defendant Employer's willful failure and refusal to (a) provide the mandated
27 meal or rest period or pay one additional hour of pay at the regular rate of pay for each workday
28 that a meal or rest period was not provided; (b) comply with Labor Code section 226, (c) comply

1 with Labor Code section 2802; and (d) being denied full and accurate compensation due to an
 2 illegal "rounding" method of calculating time worked, Plaintiff and other employees have
 3 suffered injury, loss, and harm all to their damages in a sum according to proof. On behalf of the
 4 class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgement interest,
 5 and other remedies set forth below.

- 6 31. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
 7 presently unaware of the precise amount of these expenses and fees and prays leave of court to
 8 amend this Complaint when the amounts are more fully known.

9
 10 **SECOND CAUSE OF ACTION**
Violation of Business and Professions Code §17200 - Class Action
(By The Class Against Defendant Employer and DOES 1-10)

- 11 32. Plaintiff hereby incorporates by reference paragraphs 1 through 31 as though fully set forth
 12 herein.
- 13 33. Plaintiff is an employee and direct victim of Defendant Employer's illegal business acts and
 14 practices referenced in this Complaint, has lost money as a result of such practices, and is suing
 15 both in his individual capacity and on behalf of current and former employees of Defendant
 16 Employer who share a common or general interest in the damages as a result of the illegal
 17 practices. Specifically, Plaintiff is bringing this claim on behalf of Defendant Employer's current
 18 and former employees who were and are (a) required and instructed by Defendant Employer to
 19 perform work during their mandated Meal and Rest periods and were and are therefore not
 20 provided the mandated relieved and off-duty meal and rest breaks, in violation of Labor Code
 21 sections 512 and 226.7 and Title 8, California Code of Regulations, also known as "Wage Order
 22 11." Plaintiff and other members in his class were not provided one hour of pay at their regular
 23 rate of pay for each day the Meal and Rest period was not provided, in violation of Labor Code
 24 section 226.7; (b) required to suffer the taking of earned compensation by Defendant Employer
 25 (by and through paycheck deductions) for, among other items, lost tools, without reimbursement;
 26 (c) denied accurate Itemized Wage Statements, in violation of Labor Code section 226; and (d)
 27 being denied full and accurate compensation due to an illegal "rounding" method of calculating
 28

1 time worked.

2 34. The approximately 6000 member class is ascertainable via their experience as present or past
3 employees of Defendant Employer. The members share a community of interest and an injury
4 in fact as Defendant Employer has violated California compensation laws, thereby depriving the
5 class members of money earned by them. Based on the facts set forth above, it would be
6 impracticable to proceed in individual actions.

7 35. Plaintiff has suffered an injury in fact pursuant to Business and Professions Code section 17204,
8 and has lost money as a result of Defendant Employer's illegal practices, in that he was
9 improperly denied payments for missed Meal and Rest periods in violation of Labor Code section
10 226.7, throughout his employment with Defendant Employer.

11 36. Plaintiff is bringing this action on behalf of an ascertainable class, who share a community of
12 interest, pursuant to Business and Professions Code section 17203 and Code of Civil Procedure
13 section 382, who share a common or general interest in the damages as a result of the illegal
14 practices, in that those individuals on whose behalf the action is brought have also lost money
15 as a result of Defendant Employer's practices, as set forth above, and that it would be
16 impracticable to proceed as an individual plaintiff action.

17 37. As set forth above, during the course of Plaintiff's employment, Defendant Employer failed and
18 refused to properly pay Plaintiff, and other employees, and failed to comply with fundamentally
19 protective California laws, including but not limited to Labor Code sections 226, 226.7, 512, and
20 1194.

21 38. Business and Professions Code section 17200 *et seq.*, prohibits any unlawful, unfair or fraudulent
22 business act or practice.

23 39. Plaintiff's allegations herein are based upon the business acts and practices of Defendant
24 Employer.

25 40. Defendant Employer's acts and practices, as described herein above, are unlawful, in that they
26 violate the California Labor Code and the California Industrial Welfare Commission Wage
27 Orders.

28 41. As a direct result of Defendant Employer's unlawful business acts and practices, Plaintiff and

1 other employees have been denied wages earned, and have therefore, been damaged in amount
 2 to be proven. Accordingly, Plaintiff prays for restitution and injunctive damages in an amount
 3 to be proven.

4 42. Plaintiff is informed and believes, and on that basis alleges, that Defendant Employer's unlawful
 5 business practices, alleged above, are continuing in nature and are widespread.

6 43. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
 7 Defendant Employer to enjoin it from continuing to engage in the illegal conduct alleged herein.

8 44. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.

9 45. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
 10 presently unaware of the precise amount of these expenses and fees and prays leave of court to
 11 amend this Complaint when the amounts are more fully known.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class and the
 14 general public, prays for judgment as follows:

- 15 1. For an order certifying the proposed class;
- 16 2. Upon the First Cause of Action, for compensatory damages according to proof as set forth under
 17 Labor Code sections 226, 226.7, 510, 512 and 2802, among other violations; for denying
 18 mandated Meal and Rest periods and other wages resulting therefrom; for failing to comply with
 19 Labor Code section 2802 by indemnifying its employee Class Members for ordinary business
 20 losses; for failing to comply with Labor Code section 226, and for failing to provide accurate
 21 Itemized Wage Statements;
- 22 3. Upon the First Cause of Action, for waiting time penalties according to proof, pursuant to Labor
 23 Code section 203;
- 24 4. Upon the First Cause of Action, for penalties pursuant to Title 8, California Code of Regulations,
 25 Wage Order 11 (or any Wage Order applicable);
- 26 5. For compensatory damages in an amount to be proven;
- 27 6. For lost back pay in an amount to be proven;
- 28 7. On behalf of the ascertainable class, for a permanent injunction against Defendant Employer

1 restraining, preventing, and enjoining Defendant Employer from engaging in the illegal practices
2 alleged, and to ensure compliance with, among other employee protections, Labor Code sections
3 226, 226.7, 510, 512 and 2802;

4 8. On behalf of the ascertainable class, for restitution damages on behalf of the section 17200
5 claimants who share a common or general interest;

6 9. For an award of interest, including prejudgement interest, pursuant to Labor Code section 218.6;

7 10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code sections 226,
8 226.7, 2802, and 218.5;

9 11. For an award of punitive and exemplary damages where permissible; and

10 12. For such other relief as the court deems just and proper.

11
12 Dated: 5-23-08

SULLIVAN & CHRISTIANI, LLP

13
14 William B. Sullivan,
15 Alison M. Miceli,
16 Attorneys for Plaintiff ARMAN LASSITER
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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

COXCOM, INC., a Delaware Corporation; and DOES 1 through 50, Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ARMAN LASSITER

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED 2008 MAY 23 10:19

CLERK OF COURT

SAN DIEGO, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER 37-2008-00084510-CU-OE-CT
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William B. Sullivan; Alison M. Miceli
2330 Third Avenue, San Diego, CA 92101; (619) 702-6760

DATE: MAY 23 2008
(Fecha)

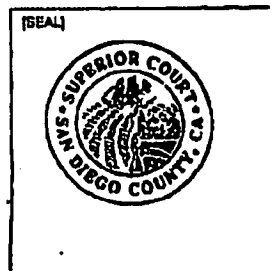
Clerk, by
(Secretario)

JAN PELT
J. VAN PELT

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 418.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William B. Sullivan [CSB No. 171637] Alison M. Miceli [CSB No. 243131] SULLIVAN & CHRISTIANI, LLP 2330 Third Avenue, San Diego, CA 92101 TELEPHONE NO: (619) 702-6760 FAX NO: (619) 702-6761 ATTORNEY FOR (Name): Plaintiff Arman Lassiter		FOR COURT USE ONLY 08-03 11:19 08-03 11:12:22 CASE NUMBER: 37-2008-00084510-CU-OE-CTL JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division - Hall of Justice		
CASE NAME: Arman Lassiter v. CoxCom, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (45) Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) Non-PIPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Two (2)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 23, 2008
 Alison M. Miceli, Esq.

(TYPE OR PRINT NAME)

Alison M. Miceli
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 1 of 2
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740,
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

American LegalNet, Inc.
 www.FormaWorldlaw.com

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PUPDWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PUPDWD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PDWD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PUPDWD

Non-PUPDWD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PUPDWD Tort (35)

Employment

Wrongful Termination (38)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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CENTRAL DIVISION

AUG 14 2008

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

5 FERRIS & BRITTON
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AUG 14 '08 PM 4:47

13 Attorneys for Defendant COXCOM, INC.

14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

16 ARMAN LASSITER, individually and on behalf
17 of other members of the general public similarly
18 situated,

19 Plaintiff,

20 v.

21 COXCOM, INC., a Delaware Corporation; and
22 DOES 1-50, inclusive,

23 Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DEFENDANT COXCOM, INC.'S
ANSWER TO UNVERIFIED
COMPLAINT**

Complaint Filed: May 23, 2008

24 Defendant COXCOM, INC. hereby files its answer to the Unverified Complaint of Plaintiff
25 ARMAN LASSITER ("Plaintiff") as follows:

26 **GENERAL DENIAL**

27 Pursuant to the provisions of California Code of Civil Procedure section 431.30(d), Defendant
28 denies, generally and specifically, each and every allegation, statement, matter and each purported
cause of action in Plaintiff's Unverified Complaint, and without limiting the generality of the

1 foregoing, deny, generally and specifically, that Plaintiff has been damaged in the manner or sums
2 alleged, or in any way at all, by reason of any acts or omissions of Defendant.

3 **SEPARATE DEFENSES**

4 In further answer to Plaintiff's Unverified Complaint, and as separate and distinct defenses,
5 Defendant alleges the following defenses. In asserting these defenses, Defendant does not assume
6 the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

7 Defendant does not presently know all of the facts and circumstances respecting Plaintiff's
8 claims. Defendant reserves the right to amend this Answer should Defendant later discover facts
9 demonstrating the existence of additional defenses.

10 **FIRST DEFENSE**

11 (Failure to State a Cause of Action)

12 1. Neither Plaintiff's Complaint nor any purported cause of action therein alleged, state
13 facts sufficient to constitute claims upon which relief may be granted against Defendant.

14 **SECOND DEFENSE**

15 (Statutes of Limitations)

16 2. Plaintiff's claims, in whole or in part, are barred by the applicable statutes of
17 limitations, including, but not limited to, California Business and Professions Code Section 17208
18 and California Code of Civil Procedure Section 340.

19 **THIRD DEFENSE**

20 (Laches)

21 3. Plaintiff has delayed inexcusably and unreasonably in the filing of this action causing
22 substantial prejudice to Defendant and thus Plaintiff's claims are barred by the equitable doctrine of
23 laches.

24 **FOURTH DEFENSE**

25 (Estoppel and Waiver)

26 4. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by
27 the doctrines of estoppel and waiver.

28 ///

FIFTH DEFENSE

(Unclean Hands)

5. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

SIXTH DEFENSE

(No Penalty)

6. Plaintiff is not entitled to any penalty award under section 203 of the California Labor Code since, at all times relevant and material herein, Defendant did not willfully fail to comply with the compensation provisions of the California Labor Code, but rather acted in good faith and had reasonable grounds for believing that they did not violate the compensation provisions of the California Labor Code.

SEVENTH DEFENSE

(Attorneys' Fees)

7. The Complaint fails to allege facts sufficient to establish a claim for attorneys' fees.

EIGHTH DEFENSE

(Penalties)

8. The Complaint fails to allege facts sufficient to establish a claim for penalties under the California Labor Code, including, but not limited to, sections 203 and 226.

NINTH DEFENSE

(Failure to Follow Employer Instructions)

9. To the extent Plaintiff missed meal periods as a result of a willful failure to follow his employer's directions, he may not recover any penalty pay as a result of such missed meal periods.

TENTH DEFENSE

(Equitable Set Off)

10. To the extent that a court holds that Plaintiff is entitled to damages or penalties, Defendant is entitled as a matter of equity to a set off for rest and meal periods provided Plaintiff, to which Plaintiff was not entitled under the law, and to the extent Plaintiff was paid wages to which he was not entitled to under the law.

ELEVENTH DEFENSE

(Constitutionality)

11. The penalties claimed by Plaintiff in this case are excessive and, thus, violate the state and federal Constitutions.

TWELFTH DEFENSE

(Failure to Exhaust Administrative Remedies)

12. The Complaint, and each cause of action alleged therein, are barred because Plaintiff failed to exhaust his administrative remedies.

THIRTEENTH DEFENSE

(Adequate Legal Remedy)

13. Plaintiff's claims for injunctive relief are barred because Plaintiff has an adequate and complete remedy at law, and/or Plaintiff cannot make the requisite showing to obtain injunctive relief in a labor dispute under California Labor Code Section 1138.1, *et seq.*

FOURTEENTH DEFENSE

(No Injury)

14. Plaintiff's claim for penalties pursuant to California Labor Code, section 226 fails because he has not suffered injury as a result of the challenged statutory violation.

FIFTEENTH DEFENSE

(No Punitive Damages)

15. Plaintiff is not entitled to recover any punitive or exemplary damages from Defendant and any allegations with respect thereto should be stricken because Defendant did not commit or authorize others to commit any alleged oppressive, fraudulent or malicious acts. (Cal. Civ. Code § 3294(a).)

SIXTEENTH DEFENSE

(Insufficient Service)

16. Plaintiff failed to serve the summons and Complaint in this action upon Defendant in accordance with statutory and constitutional requirements.

///

SEVENTEENTH DEFENSE

(No Basis for Class Claims)

17. Plaintiff cannot establish the requirements for certification of a class under Code of Civil Procedure section 382.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by his Complaint on file herein;
2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
3. That Defendant be awarded reasonable attorney's fees according to proof;
4. That Defendant be awarded the costs of suit incurred herein; and
5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

DATED: August 14, 2008

FERRIS & BRITTON, APC

By Christopher Q. Britton
Christopher Q. Britton
Attorneys for Defendant
COXCOM, INC.

SEYFARTH SHAW LLP
Thomas Kaufman
Laura Reathaford
Attorneys for Defendant
COXCOM, INC.

1 **PROOF OF SERVICE BY MAIL**

2 I, Lorell Fleming, declare that: I am over the age of 18 years and not a party to the case; I am
3 employed in, or am a resident of, the County of San Diego, California, where mailing occurs; and my
business address is: 401 West A Street, Suite 1600, San Diego, California 92101.

4 I further declare that I am readily familiar with the business' practice for collection and
5 processing of correspondence for mailing with the United States Postal Service; and that the
correspondence shall be deposited with the United States Postal Service this same day in the ordinary
6 course of business.

7 I served the following document(s): **DEFENDANT COXCOM, INC.'s ANSWER TO**
8 **UNVERIFIED COMPLAINT** by placing a true copy of each document in a separate envelope
addressed to each addressee, respectively, as follows:

9 **Alison M. Miceli, Esq.**
10 **Sullivan & Christiani LLP**
2330 Third Avenue
San Diego, California 92101

11 I then sealed each envelope and, with postage thereon fully prepaid,

12 ☐ I deposited each in the United States Postal Service at San Diego, CA.

13 ☒ I placed each for deposit in the United States Postal Service, this same day, at my business
14 address shown above, following ordinary business practices.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

16
17 Dated: Aug. 14, 2008

Lorell Fleming

18 Lorell Fleming
19
20
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22
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SEYFARTH SHAW LLP
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Attorneys for Defendant COXCOM, INC.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARMAN LASSITER, individually and on behalf
of other members of the general public similarly
situated,

Plaintiff,

v.

COXCOM, INC., a Delaware Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DEFENDANT COXCOM, INC.'S
NOTICE OF MOTION AND MOTION
TO QUASH SERVICE OF SUMMONS
[Code Civ. Pro. § 418.10]**

Complaint filed: October 25, 1999

Date: Oct. 24, 2008

Time: 10:30 a.m.

Judge: Hon. Steven R. Denton

Dept: 73

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Friday, October 24, 2008, at 10:30 a.m., or as soon
thereafter as the matter may be heard before the Honorable Steven R. Denton in Department 73 of
this court, located at 330 West Broadway, San Diego, California, 92101, defendant, COXCOM, INC.
will, and hereby does, specially appear and move this Court to quash service of summons.

This motion to quash is made pursuant to Code of Civil Procedure section 418.10 on the
grounds that this Court lacks personal jurisdiction over said defendant because no authorized method

1 of service was properly completed and said defendant has not made a general appearance in this
 2 action. In particular, despite the contrary statement in the Proof of Service filed on July 22, 2008, in
 3 this action, personal service of the summons and complaint was not made on the defendant's agent
 4 for service of process on June 27, 2008, or at any other time.

5 This motion to quash the service of summons is based on this Notice of Motion, the
 6 Memorandum of Points and Authorities in support of the motion, and the Declarations of Becky
 7 DeGeorge, Steven Cassidy, Brenda Sharpless, Joseph Freeman, Victoria Diamond and W. Lee Biddle
 8 in support of the motion, all filed herewith, all matters of which the Court may take notice, the entire
 9 file in this action, and such oral and documentary evidence as may be presented at or before the
 10 hearing.

11
 12
 13 Dated: 8/14/08

FERRIS & BRITTON
 A Professional Corporation

14
 15 By: Christopher Q. Britton
 16 Christopher Q. Britton
 17 W. Lee Biddle
 Attorneys for Defendant
 COXCOM, INC.

18 SEYFARTH SHAW LLP
 19 Thomas Kaufman
 Laura Reathafor
 20 Attorneys for Defendant
 COXCOM, INC.

1 **PROOF OF SERVICE BY MAIL**

2 I, Lorell Fleming, declare that: I am over the age of 18 years and not a party to the case; I am
3 employed in, or am a resident of, the County of San Diego, California, where mailing occurs; and my
4 business address is: 401 West A Street, Suite 1600, San Diego, California 92101.

5 I further declare that I am readily familiar with the business' practice for collection and
6 processing of correspondence for mailing with the United States Postal Service; and that the
7 correspondence shall be deposited with the United States Postal Service this same day in the ordinary
8 course of business.

9 I served the following document(s): **DEFENDANT COXCOM, INC.'S NOTICE OF**
10 **MOTION AND MOTION TO QUASH SERVICE OF SUMMONS; DEFENDANT COXCOM,**
11 **INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION**
12 **TO QUASH SERVICE OF SUMMONS; and NOTICE OF LODGMENT OF**
13 **COXCOM, INC. IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS** by
14 placing a true copy of each document in a separate envelope addressed to each addressee,
15 respectively, as follows:

16 **Alison M. Miceli, Esq.**
17 **Sullivan & Christiani LLP**
18 **2330 Third Avenue**
19 **San Diego, California 92101**

20 I then sealed each envelope and, with postage thereon fully prepaid,

21 ☐ I deposited each in the United States Postal Service at San Diego, CA.

22 ☒ I placed each for deposit in the United States Postal Service, this same day, at my business
23 address shown above, following ordinary business practices.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

26 Dated: Aug. 14, 2008

27 Lorell Fleming
28 Lorell Fleming

1 SEYFARTH SHAW LLP
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16 Attorneys for Defendant COXCOM, INC.

17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF SAN DIEGO – CENTRAL DIVISION

19 ARMAN LASSITER, individually and on behalf
20 of other members of the general public similarly
21 situated,

22 Plaintiff,

23 v.

24 COXCOM, INC., a Delaware Corporation; and
25 DOES 1-50, inclusive,

26 Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

DEFENDANT COXCOM, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
MOTION TO QUASH SERVICE OF
SUMMONS [Code Civ. Pro. § 418.10]

Complaint filed: May 23, 2008

Date: Oct. 24, 2008
Time: 10:30 a.m.
Judge: Hon. Steven R. Denton
Dept: 73

27 Defendant, COXCOM, INC. (hereinafter "Cox"), appearing specially pursuant to Code of
28 Civil Procedure section 418.10, submits this memorandum of points and authorities in support of its
motion to quash service of summons.

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SAN DIEGO COUNTY, CA

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1 **I. SUMMARY OF ARGUMENT**

2 This motion to quash is made pursuant to Code of Civil Procedure section 418.10 on the
3 ground that

4 this Court lacks personal jurisdiction because no authorized method of service was properly
5 completed on Cox and Cox has not made a general appearance in this action.

6 Personal service was not accomplished. On July 22, 2008, plaintiff filed a Proof of Service¹
7 declaring that Cox's agent for service of process, Corporation Service Company ("CSC"), was
8 personally served with the summons and complaint on June 27, 2008. Contrary to that declaration,
9 Cox's agent for service of process was not personally served with the summons or complaint on June
10 27, 2008, or, as of the drafting of this memorandum, at any time thereafter. The only thing that was
11 served on CSC as agent for service of process for Cox on June 27, 2008 was a two page letter
12 addressed to the Labor and Workforce Development Agency ("LWD Letter") accompanied by a
13 sheet of paper bearing Cox's name and the address of CSC and a brief notation. (Exhibit B to Cox's
14 Notice of Lodgment) Although the letter was personally served on June 27, 2008, it states "Via
15 Certified U.S. Mail Only." Cox was given notice of the service of this three page document by CSC
16 on June 27, 2008. The factual basis for this assertion is set forth in the declarations of CSC
17 employees Brenda Sharpless, Becky DeGeorge and Steven Cassidy, and Cox Communications, Inc.
18 employee Joseph Freeman. Cox was not personally served with the summons and complaint on June
19 27, 2008, or at any other time.

20 Defendant has not made a general appearance. Cox has filed its Answer concurrently with the
21 filing of this motion to quash. A defendant may make a motion to quash service of summons and
22 simultaneously file an Answer and doing so does not constitute a general appearance unless and until
23 the court enters an order denying the motion. (Code Civ. Pro. § 418.10(e)(1).)

24 **II. ARGUMENT**

25 A California court may exercise jurisdiction on any basis not inconsistent with the state or
26 federal constitution. (Code Civ. Pro. § 410.10.)

27 ///

28 ¹ Exhibit A to Cox's Notice of Lodgment.

1 Code of Civil Procedure section 410.50(a) provides: "Except as otherwise provided by
2 statute, the court in which an action is pending has jurisdiction over a party *from the time summons is*
3 *served on him as provided in Chapter 4 (commencing with section 413.10)*. A general appearance by
4 a party is equivalent to personal service of summons on such party." (Emphasis added.)

5 Code of Civil Procedure section 413.10 provides in pertinent part: "Except as otherwise
6 provided by statute, a summons shall be served on a person: (a) Within this state, as provided in this
7 chapter."

8 Code of Civil Procedure section 415.10 provides in pertinent part: "A summons may be
9 served by personal delivery of a copy of the summons and of the complaint to the person to be
10 served. Service of a summons in this manner is deemed complete at the time of such delivery."

11 In the instant action, plaintiff purports to have personally served the summons and complaint
12 on Cox' agent for service of process, and nearly a month later, on July 22, 2008, filed a Proof of
13 Service claiming to have achieved service of the summons and complaint on June 27, 2008.² If
14 plaintiff had delivered the summons and complaint to CSC on June 27, service on Cox would be
15 deemed complete at the time of such personal delivery, and this Court would have personal
16 jurisdiction over Cox. However, as set forth in the factual declarations submitted by Cox in support
17 of this motion and discussed further below, Cox's agent for service of process was not personally
18 served with the summons or complaint on June 27, 2008, but instead was personally served with only
19 the LWD Letter, which CSC forwarded on to Cox. Cox has not been personally served with the
20 summons and complaint and, therefore, this Court cannot exercise personal jurisdiction over Cox at
21 this time.³

22 **1. A motion to quash is the proper method to challenge the jurisdiction of the court.**

23 A defendant may serve and file a motion to quash service of summons on the ground of lack
24 of personal jurisdiction on or before the last day of his or her time to responsively plead or within any

25 _____
26 ² The case file at the Clerk's office contains an Order To Show Cause from the Court ordering Plaintiff to show cause
27 why service had not been accomplished within the required sixty day period following filing of the complaint, which
28 indicates that the Court itself believed that service had not been accomplished within 60 days of the May 23 filing date.
Exhibit C to Cox's Notice of Lodgment is a true and correct copy of this OSC. Declaration of W. Lee Biddle, Exhibit D
to Cox's Notice of Lodgment.

³ If and when personal service of the summons and complaint is in fact served on Cox, the court would acquire personal
jurisdiction over Cox in this action. However, this has not yet happened.

1 further time that the court may for good cause allow. (Code Civ. Pro. § 418.10(a).) Section 418.10
 2 allows a defendant to make a special appearance for the purpose of challenging the jurisdiction of the
 3 court without submitting to the jurisdiction of the court. (See, Jud. Coun. Com. to § 418.10.)

4 **2. Personal service was not accomplished**

5 **a. The burden is on plaintiff to prove facts establishing effective service.**

6 "In the absence of a voluntary submission to the authority of the court, compliance with the
 7 statutes governing service of process is essential to establish that court's personal jurisdiction over a
 8 defendant. When a defendant challenges that jurisdiction by bringing a motion to quash, the burden is
 9 on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an
 10 effective service." (*Dill v. Berquist Construction Co.*, (1994) 24 Cal.App.4th 1426, 1439-1440.)

11 It is the "accepted rule in this state that a sworn return of service of a summons may be
 12 impeached by evidence that contradicts it." (*City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d
 13 726, 731.) Moreover, under Evidence Code section 647, the presumption in favor of the facts stated
 14 in the return exists only when the return is signed by a registered process server. Here, the return is
 15 signed by Plaintiff's counsel, who acknowledges in the return (Ex. A, section 7e(1)) that he is not a
 16 registered process server. Therefore, the return of service in this case does not relieve Plaintiff of his
 17 initial burden of establishing all facts supporting jurisdiction.

18 Finally, the fact that defendant may have had actual notice of the action does not cure the lack
 19 of service. (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466.)

20 **b. Cox has submitted convincing evidence contradicting the plaintiff's Proof of**
 21 **Service and plaintiff has not and cannot meet its burden to prove facts**
 22 **establishing effective service.**

23 CoxCom has not yet been properly served with the summons and complaint.

24 Via a letter dated August 4, 2008,⁴ CoxCom first learned that Plaintiff purported to have
 25 served the summons and complaint on CoxCom's agent for service of process, Corporation Services
 26 Company. Plaintiff threatened to seek the default of CoxCom if CoxCom did not answer the
 27 complaint within four days of receiving the letter. (Declaration of Joseph Freeman, Ex. F to Cox's
 28 Notice of Lodgment, ¶ 2)

⁴ Exhibit E to Cox's Notice of Lodgment.

1 The August 4th letter asserted that this service occurred on June 27, 2008. The Proof of
 2 Service found in the Superior Court's files in this action states that Plaintiff's Counsel, William
 3 Sullivan, personally served the Complaint and related papers on CoxCom's Agent for Service of
 4 Process, the Corporation Services Company ("CSC") at CSC's offices in Sacramento, CA. However,
 5 as detailed below, Corporation Services Company denies that it received this service.

6 Declaration of Becky DeGeorge of CSC.

7 Cox has submitted the Declaration of Becky DeGeorge,⁵ who is employed by CSC as a
 8 Customer Service Associate in its Sacramento, California, office. Her duties include serving as a
 9 receptionist in CSC's reception area. Typically, process servers come in and drop whatever they are
 10 serving in the basket on her desk and record her name, which appears on a nameplate that is also
 11 located on her desk. Some persons serving process feel it necessary to actually hand her what is
 12 being served, in which case she receives it. It makes no difference whether the document is dropped
 13 in the basket or handed to her. (Dec. of Becky DeGeorge, ¶ 1.)

14 Once the document is received, she removes the staple, if any, and attaches a paper clip or
 15 binder clip (depending on the size of the document) to each individual document served. (Dec. of
 16 Becky DeGeorge, ¶ 2.)

17 Thereafter, the documents are picked up by a router, i.e. one of the persons whose job it is to
 18 transport documents that have been received back to the Litigation Management Service ("LMS")
 19 team area. It is a set procedure that the routers are to go straight from the reception area with the
 20 documents to the LMS area and do not deviate to any other areas. (Dec. of Becky DeGeorge, ¶ 3.)

21 Ms. DeGeorge was on duty as the CSC receptionist on June 27, 2008. To the best of her
 22 recollection, she was at her desk at 8:42 a.m. CSC received 497 documents in Sacramento on
 23 June 27, 2008. Each of these documents was picked up by a router or member of the LMS team and
 24 removed from the reception area for transport to the LMS area by the end of the day. (Dec. of Becky
 25 DeGeorge, ¶ 4.)

26 Upon being advised that plaintiff is claiming to have served a summons and complaint on Cox
 27 on June 27, 2008, and that CSC had no record of the service of such documents, Ms. DeGeorge

28 ⁵ Exhibit G to Cox's Notice of Lodgment.

1 conducted a physical search of the reception area to see if the copies of the documents allegedly
 2 served could be found. Her search was unsuccessful. (Dec. of Becky DeGeorge, ¶ 5)

3 Ms. DeGeorge has worked for CSC for 19 years and has been receiving and doing initial
 4 processing of the documents received for the last eight years. It is her unvarying custom and practice
 5 to remove the staples and clip each separate document received. She did not vary from her practice
 6 on that day. She processed each document received while she was on duty, and all of the documents
 7 she processed were picked up for transport to the LMS department. It is her strong belief that if a
 8 complaint had been served in the above-captioned matter on June 27, 2008 while she was on duty,
 9 she would have processed it, removing any staples and clipping each individual document in
 10 whatever package of documents was served. (Dec. of Becky DeGeorge, ¶ 6.)

11 Declaration of Steven Cassidy of CSC.

12 Cox has also submitted the Declaration of Steven Cassidy,⁶ who is employed by CSC as a
 13 member of its Litigation Management Systems department. Mr. Cassidy was on duty on June 27,
 14 2008, and he was the person who logged in the only service that was received by CSC as agent for
 15 service of process for Cox in the Lassiter matter on that date. Mr. Cassidy has checked CSC's
 16 records, and the only service received in the Sacramento office for CoxCom on June 27, 2008, was
 17 logged in as a three-page document ("the service") consisting of a two page letter addressed to Labor
 18 and Workforce Development Agency Re: *Arman Lassiter v. CoxCom, Inc.* and a one page document
 19 bearing CoxCom, Inc.'s ("Cox") name, CSC's address and a brief notation. (Dec. of Steven Cassidy,
 20 ¶ 1.) Exhibit B to Cox's Notice of Lodgment is a true and correct copy of the letter and
 21 accompanying page that plaintiff undisputedly served on June 27, 2008. (Dec. of Brenda Sharpless, ¶
 22 2) The letter bears the statement printed in bold above and to the right of the greeting that reads:
 23 **"Via Certified U.S. Mail Only".**

24 Mr. Cassidy explains that the service was delivered to the LMS department area by a router
 25 who brings services that have been received from the reception area, which is approximately 120 feet
 26 away. CSC standard operating procedure requires that the routers bring services directly from the
 27 reception area to the LMS department. Upon arrival in the LMS department, the router drops the
 28

⁶ Exhibit H to Cox's Notice of Lodgment.

1 service into the "Priority Service" basket, because Cox is a priority customer. As the person
2 performing the log in process, Mr. Cassidy would have taken the service from the basket and
3 reviewed page by page to determine who is being served, whether it is a court or non-court document
4 and extracted and entered the information required by the Log In Template, a true and correct copy of
5 which is Exhibit 1 to the Declaration of Steven Cassidy (Ex. H), into the LMS database. The service
6 is then scanned into CSC's LMS system. (Dec. of Steven Cassidy, ¶ 2.)

7 Mr. Cassidy states that the foregoing description is the standard operating procedure for
8 logging in documents at CSC and it is the procedure that he follows as a matter of custom and
9 practice. Although he does not remember this specific document, he has no reason to believe that he
10 deviated from standard operating procedures in any way. Mr. Cassidy has worked logging in
11 services for the last three years, and he is very familiar with summons and complaints, as he has often
12 been called upon to review, log and scan them in during the course of his CSC employment. Mr.
13 Cassidy is confident that if the materials that were served on Cox on June 27, 2008 had included a
14 complaint, he would have become aware of it in the course of the review associated with the log in
15 process and would have logged it in as a summons and complaint. Based on the fact that no
16 summons and complaint was logged in the *Lassiter* case, it is Mr. Cassidy's opinion that no summons
17 and complaint were received by CSC on June 27, 2008 or on any day thereafter. (Dec. of Steven
18 Cassidy, ¶ 3.)

19 Mr. Cassidy further states that it is not uncommon for a court document and a non-court
20 document to be served together as part of the same service. If that had occurred, the court document
21 would have been the one selected as the title of the log in with the accompanying non-court document
22 noted. Because there was no court document that was part of the June 27, 2008 service of Cox, this
23 did not occur. (Dec. of Steven Cassidy, ¶ 4.)

24 Upon learning that plaintiff contends that he served Cox by serving CSC with a summons and
25 complaint in the *Lassiter* matter on June 27, 2008, and that CSC has no record of the service, Mr.
26 Cassidy searched the LMS area and the area connecting the reception area to the LMS area looking
27 for the summons and complaint and found no such documents. (Dec. of Steven Cassidy, ¶ 5)

28 ///

1 Declaration of Brenda Sharpless of CSC.

2 Cox has also submitted the Declaration of Brenda Sharpless,⁷ who is employed by CSC as a
 3 Certified Customer Service Associate. She is the Customer Service Associate with primary
 4 responsibility for processing documents served on CSC as agent for service of process for CoxCom,
 5 Inc. in California. Documents served on CSC as agents for its customers are referred to as
 6 "services." (Dec. of Brenda Sharpless, ¶ 1.)

7 Ms. Sharpless has worked for CSC since December 2, 2002. She is assigned to the Litigation
 8 Management Systems ("LMS") department. In addition to managing her own assigned accounts, she
 9 is also a member of the LMS Quality Team, which involves reviewing procedures, system issues and
 10 enhancements and training other persons to use the system. She is very familiar with CSC's
 11 procedures for processing services received for its customers. (Dec. of Brenda Sharpless, ¶ 2.)

12 Ms. Sharpless has reviewed CSC's global list of services received regularly throughout each
 13 day to find services that have been received for Cox. When a service for Cox is received by CSC and
 14 has been logged in and scanned into the LMS, she retrieves the document from the LMS, opens it,
 15 and reviews each page of each service to insure that data already extracted from the service and
 16 entered in the LMS data base is correct and to ascertain and enter additional data, including nature of
 17 the case, sender details, response date, and document type. Her review includes checking for any
 18 missing or skipped pages. The foregoing procedure is CSC standard operating procedure which she
 19 follows. (Dec. of Brenda Sharpless, ¶ 3.)

20 On June 27, 2008, Ms. Sharpless noted that Document #4176215 had been logged in as a
 21 service for Cox. She opened and reviewed the document as described above, verifying and logging
 22 in the necessary information. The service consisted of three pages, a two page letter addressed to
 23 Labor and Workforce Development Agency Re: *Arman Lassiter v. CoxCom, Inc.* ("Lassiter"), and a
 24 page addressed to CoxCom, Inc. c/o Lawyers Incorporating Service on which the following notation
 25 appeared: "Letter re 2699 Complaint". (Dec. of Brenda Sharpless, ¶ 4.)

26 At intervals throughout June 27, 2008, she looked for services for Cox on CSC's LMS. The
 27 letter to the Labor and Workforce Development agency and page addressed to CoxCom, Inc. were the
 28

⁷ Exhibit I to Cox's Notice of Lodgment.

1 only service that was logged into CSC's system for Cox in the Lassiter matter on June 27, 2008.
2 (Dec. of Brenda Sharpless, ¶ 5)

3 Following her review of the service, at 5:19 p.m. EDT on June 27, 2008, CSC notified Vickie
4 Diamond of Cox via email that service of the Letter to the Labor and Workforce Development
5 Agency and the accompanying note in the Lassiter matter had been received. (Dec. of Brenda
6 Sharpless, ¶ 6.)

7 There have been a total of three services received by CSC in the Lassiter matter. In addition
8 to the June 27, 2008 service of the letter to the Labor and Workforce Development Agency described
9 above, on June 30, 2008, the same letter to the Labor and Workforce Development Agency was
10 received by CSC from plaintiff via certified mail, and on July 31, 2008, a one page letter concerning
11 receipt of a notice of alleged Labor Code violations pursuant to Labor Code Section Board 2699,
12 was received via certified mail from Doug Hoffner, Undersecretary of the California Labor &
13 Workforce Development Agency. (Dec. of Brenda Sharpless, ¶ 7.)

14 As the person at CSC primarily responsible for processing services received for Cox, Ms.
15 Sharpless regularly checks for services received for Cox throughout each business day. She has
16 conducted such checks of the LMS on a daily basis (excluding holidays and weekends) since June 27,
17 2008. If any summons and complaint in the *Lassiter* matter had been logged or scanned in to CSC's
18 LMS at any time on or since June 27, 2008, she would be aware of it. No summons or complaint in
19 the Lassiter case has been logged or scanned in to the LMS on or since June 27, 2008. CSC has no
20 record of such a summons and complaint ever having been served on it as an agent for Cox. Based
21 on her familiarity with CSC's procedures for handling services, her awareness that CSC's policy and
22 practice is to log and scan in every service received on the day of its receipt and the absence of any
23 record at CSC that any summons and complaint has been received in the Lassiter matter, it is Ms.
24 Sharpless' opinion that no summons and complaint in the Lassiter case have ever been served on
25 CSC in its capacity as agent for service of process for Cox or otherwise. (Dec. of Brenda Sharpless, ¶
26 8.)

27 ///

28 ///

c. **Plaintiff appears to have served the wrong document.**

In light of the foregoing facts, and particularly the facts that plaintiff did serve the letter which is Exhibit B on June 27 and that said letter bears the statement, "Via Certified U.S. Mail Only", it appears that plaintiff mistakenly served the wrong document. The letter to the Labor and Workforce Development Agency was not required to be served on Cox by personal service on Cox's agent. In fact, the language of the applicable statute (Labor Code §2699.3(a)(1)) requires that "[t]he aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated..." (emphasis added) Indeed, a few days later, plaintiff apparently realized his mistake and sent a copy of the identical letter to CSC via certified mail. (Dec. of Brenda Sharpless, ¶7)

Given plaintiff's obvious intent to serve the letter to the Agency via certified mail and the fact that CSC has no record whatsoever of any summons and complaint being filed, it is certainly conceivable that plaintiff's counsel was handed an envelope by someone in his office which he incorrectly believed to be the summons and complaint and delivered it to CSC on June 27 and thereafter, in the good faith, albeit mistaken, belief that he had served the summons and complaint, filed the Proof of Service (Ex. A) on July 22, 2008. Such imperfections are part of the human condition. No one is to blame for the confusion, but neither should Cox be penalized as the result of such mistake by being treated as if it has been served when it has not.

d. **Neither logic nor physical evidence supports the existence of any service of summons or complaint.**

There would have been no reason for CSC to log and scan in one of multiple documents simultaneously served. Presumably, the summons and complaint were larger than the two page letter and one page handwritten address that are known to have been served on June 27th. If a document was going to be lost, it is more likely that the smaller document would be the one misplaced. In an exercise of caution, the entire area at CSC from the reception area to and including the area where logging in and scanning take place have been searched and no summons or complaint has been found. (Dec. of Becky DeGeorge, ¶ 5; Dec. of Steven Cassidy, ¶ 5)

///

1 e. Cox has not received notice of the service of any summons and complaint.

2 Not only has CSC not given notice of the service of any summons or complaint in this matter,
3 but apart from plaintiff's assertions in the Proof of Service (Ex. A) and Miceli August 4 letter (Ex. E),
4 the correctness of both of which Cox contests, Cox has received no notice that a summons or
5 complaint have been served at any time in this case. (Freeman Declaration, Ex. F, ¶ 5; Dec. of Vickie
6 Diamond,⁸ ¶ 3)

7 3. Defendant has not made a general appearance.

8 Cox has filed its Answer concurrently with the filing of this motion to quash. A defendant
9 may make a motion to quash service of summons and simultaneously file an Answer and doing so
10 does not constitute a general appearance unless and until the court enters an order denying the
11 motion. (Code Civ. Pro. § 418.10(e)(1).)

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⁸ Exhibit J to Cox's Notice of Lodgment

1 **III. CONCLUSION**

2 Based on the evidence submitted by Cox and the foregoing reasons, Cox's motion to quash
3 service of summons should be granted.
4
5
6

7 Dated: August 14, 2008

FERRIS & BRITTON
A Professional Corporation

8
9 By: Christopher Q. Britton
Christopher Q. Britton
W. Lee Biddle

10
11 Attorneys for Defendant
COXCOM, INC.
12

13 SEYFARTH SHAW LLP
Thomas Kaufman
14 Laura Reathafor

15 Attorneys for Defendant
COXCOM, INC.
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PROOF OF SERVICE BY MAIL

I, Lorell Fleming, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where mailing occurs; and my business address is: 401 West A Street, Suite 1600, San Diego, California 92101.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I served the following document(s): **DEFENDANT COXCOM, INC.'S NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS; DEFENDANT COXCOM, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO QUASH SERVICE OF SUMMONS; and NOTICE OF LODGMENT OF COXCOM, INC. IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS** by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Alison M. Miceli, Esq.
Sullivan & Christiani LLP
2330 Third Avenue
San Diego, California 92101

I then sealed each envelope and, with postage thereon fully prepaid,

☐ I deposited each in the United States Postal Service at San Diego, CA.

☒ I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: Aug. 14, 2008

Lorell Fleming
Lorell Fleming

1
PROOF OF SERVICE BY MAIL

COPY**F I L E D**
Clerk of the Superior Court

AUG 14 2008

SEYFARTH SHAW LLP
 Thomas Kaufman (State Bar No. 177936)
 Laura Reathafor (State Bar No. 254751)
 2029 Century Park East, Suite 3300
 Los Angeles, California 90067-3063
 Telephone: (310) 277-7200
 Facsimile: (310) 201-5219

FERRIS & BRITTON
 A Professional Corporation
 Christopher Q. Britton (State Bar No. 56623)
 W. Lee Biddle (State Bar No. 217128)
 401 West A Street, Suite 1600
 San Diego, CA 92101
 Telephone: (619) 233-3131
 Facsimile: (619) 232-9316

Attorneys for Defendant COXCOM, INC.

AUG 14 '08 PM 4:43

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARMAN LASSITER, individually and on behalf of
 other members of the general public similarly
 situated,

Plaintiff,

v.

COXCOM, INC., a Delaware Corporation; and
 DOES 1-50, inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**NOTICE OF LODGMENT OF
 COXCOM, INC. IN SUPPORT OF
 MOTION TO QUASH SERVICE OF
 SUMMONS**

Date: Oct. 24, 2008
 Time: 10:30 a.m.
 Judge: Hon. Steven R. Denton
 Dept: 73

Complaint Filed: May 23, 2008

PLEASE TAKE NOTICE that Defendant COXCOM, INC. hereby lodges the following
 documents in support of its Motion To Quash Service of Summons:

<u>Ex.</u>	<u>Exhibit Description</u>	<u>Evidentiary Foundation</u>
A	Proof of Service	Biddle Declaration, ¶ 2
B	Letter to Labor and Workforce Development Agency	Diamond Declaration ¶ 2
C	Order to Show Cause Re: Failure to File Certificate of Service	Biddle Declaration ¶ 3

**NOTICE OF LODGMENT OF COXCOM, INC. IN SUPPORT OF MOTION TO QUASH
 SERVICE OF SUMMONS**

1	D	Declaration of W. Lee Biddle	Self-Authenticating
2	E	8/4/08 Letter from Alison Miceli to Joe Freeman	Freeman Declaration ¶ 2
3	F	Declaration of Joseph Freeman	Self-Authenticating
4	G	Declaration of Becky DeGeorge	Self-Authenticating
5	H	Declaration of Steven Cassidy	Self-Authenticating
6	I	Declaration of Brenda Sharpless	Self-Authenticating
7	J	Declaration of Vickie Diamond	Self-Authenticating
8	K.	CSC 6/27/08 Notice of Service	Diamond Declaration ¶ 2

9
10 Dated: August 14, 2008

FERRIS & BRITTON,
A Professional Corporation

11
12 By: Christopher Q. Britton
13 Christopher Q. Britton
14 W. Lee Biddle
15 Attorneys for Defendant
16 COXCOM INC.

17 SEYFARTH SHAW LLP
18 Thomas Kaufman
19 Laura Reathafor
20 Attorneys for Defendant
21 COXCOM, INC.
22
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28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William B. Sullivan [CSB No. 171637]; Alison M. Miceli [CSB No. 243131] Sullivan & Christiani, LLP 2330 Third Avenue San Diego, CA 92101 TELEPHONE NO.: (619) 702-6760 FAX NO. (Optional): (619) 702-6761 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff ARMAN LASSITER		FILED CIVIL BUSINESS DIVISION CENTRAL DIVISION 2008 JUL 22 P 12:22 CLERK - SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
PLAINTIFF/PETITIONER: ARMAN LASSITER DEFENDANT/RESPONDENT: COXCOM, INC., et al.		CASE NUMBER: 37-2008-00084510-CU-OE-CTL
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): Notice of Case Assignment
3. a. Party served (specify name of party as shown on documents served):
Defendant CoxCom, Inc.
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Lawyers Incorporating Service, Authorized Agent for Service of Process, Becky DeGeorge
4. Address where the party was served:
2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833
5. I served the party (check proper box)
 - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): June 27, 2008 (2) at (time): 8:42 a.m.
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 POS-010 (Rev. January 1, 2007)

PROOF OF SERVICE OF SUMMONS

Code of Civil Procedure, § 417.10
 American LegalNet, Inc.
 www.FormsWorkflow.com

PLAINTIFF/PETITIONER: ARMAN LASSITER	CASE NUMBER:
DEFENDANT/RESPONDENT: COXCOM, INC., et al.	37-2008-00084510-CU-OE-CTL

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): Defendant CoxCom, Inc.

under the following Code of Civil Procedure section:

- | | |
|-------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: William B. Sullivan
- b. Address: Sullivan & Christiani, LLP, 2330 Third Avenue, San Diego, CA 92101
- c. Telephone number: (619) 702-6760
- d. The fee for service was: \$ 0.00
- e. I am:

- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: July 22, 2008

William B. Sullivan

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3038

2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2107
FACSIMILE 702-382-2016

June 25, 2008

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified U.S. Mail Only

Re: Arman Lassiter v. COXCOM, Inc.

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by COXCOM, Inc. in the above referenced matter. Thank you for your assistance on this issue.

The specific provisions alleged to have been violated by COXCOM, Inc. are as follows:

CALIFORNIA LABOR CODE SECTIONS 204, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1199,
2802

Facts and Theories supporting the allegation: Our client, Arman Lassiter, has worked as a "Field Service Technician" for COXCOM, Inc. since 1997.

Throughout the term of his employment, COXCOM, Inc. has required Mr. Lassiter, and other employees of COXCOM, to experience actions illegal under the California Labor Code, including the following:

- COXCOM would regularly deduct money from employees paychecks for lost or broken work tools and/or components, in violation of - among others - Labor Code section 2802;

- COXCOM has - until very recently (and in response to Mr. Lassiter's complaints) - failed to provide a Second Meal Period (or a Meal Period Payment) where the COXCOM employees work more than 10 hours in a day, in violation of - among others - Labor Code sections 226.7 and 512;

- COXCOM has failed to provide compliant Initial Meal Periods (or a Meal Period Payment) where the COXCOM employees regularly are provided less than 30 minutes, completely relieved time-off, in violation of - among others - Labor Code sections 226.7 and 512;

- COXCOM has failed to provide timely regular and Overtime Compensation to its employees due to a "rounding" process whereby all hours worked by the COXCOM employees are not calculated or paid for, in violation of - among others - Labor Code sections 204, 510, 1194 and 1197.1; and

- COXCOM has failed to provide statutorily compliant and accurate Itemized Wage Statements, in that the Overtime and Double Time Rates are inaccurate (and at times less than the reported Regular Rate), in violation of - among others - Labor Code section 226.

To confirm, COXCOM, Inc., Inc. is a "person" as defined within California Labor Code section 18. The "Meal Period Payment" required by Labor Code section 226.7 is dis-positively a "wage," as recently confirmed by the California Supreme Court in Murphy v. Kenneth Cole, 40 Cal 4th 1094.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



William B. Sullivan

cc: *Via Certified Mail
and Personal Service*

COXCOM, INC.
c/o CSC- Lawyers Incorporating Service
Agent For Service of Process
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

COXCOM, INC.

clo - LAWYERS Incorporating service
2730 Gateway Oaks Drive, Suite 100
SACRAMENTO, CA 95833

LETTER RE: 2699 COMPLAINT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7073	
PLAINTIFF(S) / PETITIONER(S): Arman Lassiter	
DEFENDANT(S) / RESPONDENT(S): Coxcom, Inc.	
LASSITER VS. COXCOM, INC.	
NOTICE OF HEARING	CASE NUMBER: 37-2008-00084510-CU-OE-CTL


Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
OSC - Failure to File Certificate of Service	09/19/2008	02:15 pm	C-73	Steven R. Denton

The hearing will be cancelled if BOTH of the following occur 10 days prior to the hearing date: 1) File the above document; and 2) Stipulate to and pay a sanction in the amount of \$50, payable to "San Diego Superior Court", WITH A COPY OF THIS NOTICE, in the IC department to which the case is assigned. If you are unable to comply with one or both of the above requirements, appearance at the hearing is mandatory. If more court time is required, additional sanctions may be imposed.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO Central 330 West Broadway San Diego, CA 92101	
SHORT TITLE: Lassiter vs. Coxcom, Inc.	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: 37-2008-00084510-CU-OE-CTL

I certify that I am not a party to this cause. I certify that a true copy of the NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 08/05/2008.

Clerk of the Court, by: , Deputy

Alison M. Miceli
Sullivan & Christiani, LLP
2330 Third Avenue
San Diego, CA 92101

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Page: 2

SEYFARTH SHAW LLP
 Thomas Kaufman (State Bar No. 177936)
 Laura Reathafor (State Bar No. 254751)
 2029 Century Park East, Suite 3300
 Los Angeles, California 90067-3063
 Telephone: (310) 277-7200
 Facsimile: (310) 201-5219

FERRIS & BRITTON
 A Professional Corporation
 Christopher Q. Britton (State Bar No. 56623)
 W. Lee Biddle (State Bar No. 217128)
 401 West A Street, Suite 1600
 San Diego, CA 92101
 Telephone: (619) 233-3131
 Facsimile: (619) 232-9316

Attorneys for Defendant COXCOM, INC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARMAN LASSITER, individually and on behalf of
 other members of the general public similarly
 situated,

Plaintiff,

v.

COXCOM, INC., a Delaware Corporation; and
 DOES 1-50, inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF W. LEE BIDDLE IN
 SUPPORT OF MOTION OF
 DEFENDANT COXCOM, INC. TO
 QUASH SERVICE OF SUMMONS**

Date: Oct. 24, 2008
 Time: 10:30 a.m.
 Judge: Hon. Steven R. Denton
 Dept: 73

Judge: Hon. Steven R. Denton
 Dept: 73

Complaint Filed: May 23, 2008

W. Lee Biddle declares:

1. I am an attorney, a member of the State Bar of California and an associate at the firm of Ferris & Britton, P.C., one of the counsels for defendant CoxCom, Inc. ("Cox") in the above-captioned litigation.

2. On August 5, 2008, I reviewed the case file in this matter at the Clerk of Court's office. In the course of that review, I ascertained that the file contained a Proof of Service of

1 Summons signed by Plaintiff's counsel, William B. Sullivan, indicating that the complaint and
2 summons in this matter had been served on June 24, 2008. Exhibit A to Cox's Notice of Lodgment is
3 a true and correct copy of that Proof of Service.

4 3. I also found an Order To Show Cause in the case file accompanied by a proof of
5 service indicating that it was served on Plaintiff's counsel on August 5, 2008, ordering plaintiff to
6 show cause re Failure to File Certificate of Service. Exhibit C to Cox's Notice of Lodgment is a true
7 and correct copy of that Order to Show Cause.

8 4. I have personal knowledge of the foregoing facts and if called as a witness, could so
9 testify.

10 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
11 is true and correct. Executed this 12 day of Aug, 2008 at San Diego, California.

12
13 
14 W. Lee Biddle

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MUL VALLEY, CA 94941
PHONE 415-383-6131
FACSIMILE 415-888-3035

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-388-0376
FACSIMILE 702-388-0572

August 4, 2008

Joseph M. Freeman, Esq.
COX COMMUNICATIONS, INC.
1400 Lake Hearn Drive
Atlanta, Georgia 30319

Via Facsimile Only (404) 843-5845

Re: Arman Lassiter v. COXCOM
Case No.: 69-6347

Dear Mr. Freeman:

Please allow this correspondence to serve as a request for assistance and clarification in the above-referenced matter. Thank you for your assistance throughout this litigation.

As you are presumably aware, the Complaint of Mr. Lassiter, as well as a Labor Code section 2699, *et seq.* notification letter, were served on COXCOM's agent for service of process on June 27, 2008. We have recently received a LWDA "right to sue" letter, and are in the process of preparing to file an Amended Complaint. However, the time period for filing a response to the operative Complaint has passed, and we have yet to receive a responsive pleading. Further, the Court records do not list a response to the Complaint.

Given the above, we must respectfully demand that COXCOM file and serve an Answer to the operative Complaint no later than Friday, August 8, 2008; Noon. If we have not received proof of the filing and service of an Answer by that time, we will have no option but to prepare and file a Default as to COXCOM. Given your courtesy and assistance throughout the Mediation process, we are reluctant to do so. For that reason, please immediately comply with the above request.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Alison M. Miceli

bcc:

1 SEYFARTH SHAW LLP
2 Thomas Kaufman (State Bar No. 177936)
3 Laura Reathafor (State Bar No. 254751)
4 2029 Century Park East, Suite 3300
5 Los Angeles, California 90067-3063
6 Telephone: (310) 277-7200
7 Facsimile: (310) 201-5219

8 FERRIS & BRITTON
9 A Professional Corporation
10 Christopher Q. Britton (State Bar No. 56623)
11 W. Lee Biddle (State Bar No. 217128)
12 401 West A Street, Suite 1600
13 San Diego, CA 92101
14 Telephone: (619) 233-3131
15 Facsimile: (619) 232-9316

16 Attorneys for Defendant COXCOM, INC

17
18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF SAN DIEGO – CENTRAL DIVISION

20 ARMAN LASSITER, individually and on behalf of
21 other members of the general public similarly
22 situated,

23 Plaintiff,

24 v.

25 COXCOM, INC., a Delaware Corporation; and
26 DOES 1-50, inclusive,

27 Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF JOSEPH FREEMAN
IN SUPPORT OF MOTION OF
COXCOM, INC. TO QUASH**

Date: Oct. 24, 2008

Time: 10:30 a.m.

Judge: Hon. Steven R. Denton

Dept: 73

Complaint Filed: May 23, 2008

28 Joseph Freeman declares:

1. I am an attorney, a member of the State Bar of Georgia, and am employed as an attorney for Cox Communications, Inc. ("Cox") in Atlanta, Georgia. I am the attorney in house at Cox who is responsible for handling the claims being asserted against CoxCom, Inc. by Arman Lassiter, including any litigation he may file against the Company.

///

2. On August 5, 2008, I received and reviewed a letter from counsel for Plaintiff, Alison Miceli, dated August 4, 2008 ("the Miceli letter"), in the above-captioned matter, in which, among other things, Ms. Miceli asserted that Plaintiff had served CoxCom, Inc. with a copy of the summons and complaint in the case on June 27, 2008. Exhibit E to Cox's Notice of Lodgment is a true and correct copy of Ms. Miceli's August 4, 2008 letter.

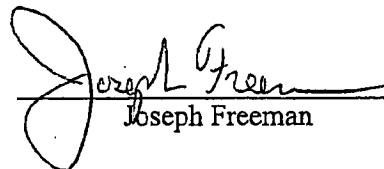
3. Until my receipt of the Miceli letter, I had no knowledge or information that CoxCom, Inc. had been served with a summons and complaint in this case. In the ordinary course of events, if a party serves a complaint and summons on CoxCom, Inc.'s agent for service of process in California, Corporation Services Company ("CSC"), will process the documents and notify Vicki Diamond of Cox Enterprises, Inc. (Cox's parent company) the same day of the service of the document. Upon my review of the Miceli letter, I immediately contacted Ms. Diamond and ascertained that she had not received any notice of a summons and complaint having been served in the Lassiter matter.

4. On or about June 27, 2008, I was alerted to the fact that Cox had been personally served by plaintiff with a copy of a letter to the Labor and Workforce Development Agency accompanied by a sheet of paper containing CoxCom, Inc.'s name and CSC's address. Exhibit B to Cox's notice of Lodgment is a true and correct copy of the letter to Labor and Workforce Development Agency that I was advised had been served on June 27, 2008.

5. Insofar as I am aware, CoxCom, Inc. has never been served with a summons and/or complaint in the above-captioned matter.

6. I have personal knowledge of the foregoing facts and if called as a witness could so testify.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 12th day of August, 2008 at Atlanta, Georgia.


Joseph Freeman

SEYFARTH SHAW LLP
 Thomas Kaufman (State Bar No. 177936)
 Laura Reathafor (State Bar No. 254751)
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 Christopher Q. Britton (State Bar No. 56623)
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 401 West A Street, Suite 1600
 San Diego, CA 92101
 Telephone: (619) 233-3131
 Facsimile: (619) 232-9316

Attorneys for Defendant COXCOM, INC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

ARMAN LASSITER, individually, and on behalf
 of others similarly situated,

Plaintiff,

vs.

COXCOM, INC., a Delaware Corporation; and
 DOES 1 to 50, Inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF BECKY DEGEORGE
 IN SUPPORT OF MOTION OF
 DEFENDANT COXCOM, INC. TO QUASH
 SUMMONS AND COMPLAINT**

Date: Oct. 24, 2008

Time: 10:30 a.m.

Judge: Hon. Steven R. Denton

Dept: 73

Complaint Filed: May 23, 2008

Becky DeGeorge declares:

1. I am a Customer Service Associate for Corporation Service Company dba Lawyers
 Incorporating Service ("CSC") office in Sacramento, California. As such my duties include serving
 as a receptionist in the reception area. Typically, process servers come in and drop whatever they are
 serving in the basket on my desk and record my name which appears on a nameplate that is also
 located on my desk. Some persons serving process feel it necessary to actually hand me what is
 being served, in which case I accept it. It makes no difference whether the document is dropped in
 the basket or handed to me.

2. Once the document is received, I remove the staple, if any, and attach a paper clip or binder clip (depending on the size of the document) to each individual document served.

3. Thereafter, the documents are picked up by a router, i.e. one of the persons whose job it is to transport documents that have been received back to the LMS team area. It is a set procedure that the Routers are to go straight from the reception area with the documents to the LMS area and do not deviate to any other areas.

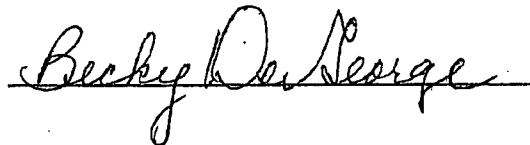
4. I was on duty as the CSC receptionist on June 27, 2008. To the best of my recollection, I was at my desk at 8:42 a.m. CSC received 497 documents in Sacramento on June 27, 2008. Each of these documents was picked up by a router or member of the LMS team and removed from the reception area for transport to the LMS area by the end of the day.

5. Upon learning that plaintiff was contending that a summons and complaint was served on CSC as an agent for Cox on June 27, 2008 and that CSC has no record of such service ever having been received, I conducted a thorough search of the Reception area looking for the document. After a thorough search, I found nothing.

6. I have worked for CSC for nineteen years and have been receiving and doing initial processing of the documents received for the last eight years. It is my unvarying custom and practice to remove the staples and clip each separate document received. I did not vary from my practice on that day. I processed each document received while I was on duty, and all of the documents I processed were picked up for transport to the LMS department. It is my strong belief that if a complaint had been served in the above-captioned matter on June 27, 2008 while I was on duty, I would have processed it, removing any staples and clipping each individual document in whatever package of documents was served.

7. I have personal knowledge of the foregoing facts and if called as a witness, could so testify.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 11th day of August, at Sacramento, California.



Becky DeGeorge

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1 SEYFARTH SHAW LLP
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15 Facsimile: (619) 232-9316

16 Attorneys for Defendant COXCOM, INC

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF SAN DIEGO – CENTRAL DIVISION

19 ARMAN LASSITER, individually and on behalf of
20 other members of the general public similarly
21 situated,

22 Plaintiff,

23 v.

24 COXCOM, INC., a Delaware Corporation; and
25 DOES 1-50, inclusive,

26 Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF STEVEN CASSIDY
IN SUPPORT OF MOTION TO QUASH**

Date: Oct. 24, 2008

Time: 10:30 a.m.

Judge: Hon. Steven R. Denton

Dept: 73

Judge: Hon. Steven R. Denton

Dept: 73

Complaint Filed: May 23, 2008

27 Steven Cassidy declares:

28 1. I am employed by Corporation Services Company dba Lawyers Incorporating Service
("CSC") as a member of its Litigation Management Systems department. I was on duty on June 27,
2008, and I logged in a service that was received by CSC as agent for service of process for CoxCom,
Inc. I have checked CVC's records, and the only service received in the Sacramento office for
CoxCom on June 27, 2008, was logged in as a three page document ("the service") consisting of a
two page letter addressed to Labor and Workforce Development Agency Re: *Arman Lassiter v.*

1 CoxCom, Inc. and one page bearing CoxCom, Inc.'s ("Cox") name, CSC's address and a brief
2 notation. I am the person who logged this service in.

3 2. The service was delivered to the LMS department area by a router who brings services
4 that have been received from the reception area, which is approximately 120 feet away. CSC
5 standard operating procedure requires that the routers bring services directly from the reception area
6 to the LMS department. Upon arrival in the LMS department, the router places the service into the
7 "Priority Service" basket, because Cox is a priority customer. As the person performing the log in
8 process, I would have taken the service from the basket and reviewed it to determine who is being
9 served, whether it is a court or non-court document and extracted and entered the information
10 required by the Log In Template, a true and correct copy of which is Exhibit 1 to this declaration, into
11 the LMS database. The service is then scanned into CSC's LMS system.

12 3. The foregoing description is the standard operating procedure for logging in
13 documents at CSC and it is the procedure that I follow as a matter of custom and practice. Although I
14 do not remember this specific document, I have no reason to believe that I deviated from standard
15 operating procedures in any way. I have worked logging in services for the last three years, and I am
16 very familiar with summons and complaints, as I have often been called upon to review, log and scan
17 them during the course of my CSC employment. I am confident that if the materials that were served
18 on Cox on June 27, 2008 had included a complaint, I would have become aware of it in the course of
19 the review associated with the log in process and would have logged it in as a summons and
20 complaint. Based on the fact that no summons and complaint was logged in the *Lassiter* case, it is
21 my opinion that no summons and complaint were received by CSC on June 27, 2008 or on any day
22 thereafter.

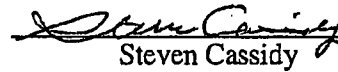
23 4. It is not uncommon for a court document and a non-court document to be served
24 together as part of the same service. If that had occurred, the court document would have been the
25 one selected as the title of the log in with the accompanying non-court document noted. Because
26 there was no court document that was part of the June 27, 2008 service of Cox, this did not occur.

27 5. Upon learning that plaintiff is claiming that he served a summons and complaint on
28 CSC as agent for Cox and that CSC has no record of such a service ever being received, I searched

1 the entire LMS department area including the 120 foot distance from the reception area to the LMS
2 department area, including moving furniture, looking for such a document. After a thorough search, I
3 found nothing.

4 6. I have personal knowledge of the foregoing facts and if called as a witness could so
5 testify.

6 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
7 is true and correct. Executed this 11th day of August, 2008 at Sacramento, California.

8
9 
10 Steven Cassidy

le 3 LMS Calls in Queue 0 PB Calls in Queue 0 ADD Calls 1 Agents Staffed 0 Agents Available

2 Log a New Document - Microsoft Internet Explorer provided by CSC United States Corporation

Address: http://incspot.cscinfo.com/lms/documentHome.csc?action=logNew

IncSpot LMS Processing Employees Only | Home | Log Off | Contact Us | What's New

Hide Navigation

Work Lists

Documents (0)

Open Packages (1)

Closed Packages (1)

Actions

Log Documents

Search LMS

User Admin

Exit LMS

Add Attachment

Log Document Into LMS

Source Document: ☒ Scan/Tax Original(s) ☐ Package Hard Copy ☐ Electronic Document

Attachment(s): ☐ Yes Brief Description: ☐ No

Country Served:

Jurisdiction Served:

Date Served:

How Served:

Tracking Number:

Entity Served:

Case Number:

Title of Action / Matter Name:

☐ First Named Plaintiff:

☐ First Named Defendant:

☐ Title of Action:

Service Type:

25 Internet Explorer 1.0.5402.5572

Exhibit 1

LMS Calls in Queue 0 PB Calls in Queue 0 ADD Calls 1 Agents Stopped 0 Agents Available 3

Log a New Document - Microsoft Internet Explorer provided by USC United States Corporation

Address: http://tscportal.cscinfo.com/lms/documentHome.csc?action=logNew

*** Service Type:**

☒ **Court Document**

* Court:

* Level:

* Country Filed:

* Jurisdiction Filed:

Temporary Restraining Order: ☐ Yes ☒ No

Preliminary Injunction: ☐ Yes ☒ No

Stop Work Order: ☐ Yes ☒ No

Default Motion, Judgment, Order: ☐ Yes ☒ No

☐ **Non-Court Document**

* Type of Document:

* Sender Name:

* Sender Phone Number:

* Total Number of Documents:

Taskbar: Start | Internet Explorer | Run: C:\Program Files\Internet Explorer\Internet Explorer.exe | 12:50 PM

1 SEYFARTH SHAW LLP
2 Thomas Kaufman (State Bar No. 177936)
3 Laura Reathaford (State Bar No. 254751)
4 2029 Century Park East, Suite 3300
5 Los Angeles, California 90067-3063
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8 FERRIS & BRITTON
9 A Professional Corporation
10 Christopher Q. Britton (State Bar No. 56623)
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12 401 West A Street, Suite 1600
13 San Diego, CA 92101
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15 Facsimile: (619) 232-9316

16 Attorneys for Defendant COXCOM, INC

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARMAN LASSITER, individually and on behalf of
other members of the general public similarly
situated,

Plaintiff,

v.

COXCOM, INC., a Delaware Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF BRENDA
SHARPLESS RE: FAILURE TO SERVE
COMPLAINT**

Date: Oct. 24, 2008

Time: 10:30 a.m.

Judge: Hon. Steven R. Denton

Dept: 73

Complaint Filed: May 23, 2008

Brenda Sharpless declares:

1. I am a Certified Customer Service Associate at Corporation Service Company dba
Lawyers Incorporating Service ("CSC"). I received my Bachelor of Arts degree from Anderson
College in 1978 and my Associate of Science degree in Office Management from Darton College in
1988. I am the Customer Service Associate with primary responsibility for processing documents

1 served on CSC as agent for service of process for CoxCom, Inc. in California. Documents served on
2 CSC as agents for its customers are referred to as "services".

3 2. I have worked for CSC since December 2, 2002. I am assigned to the Litigation
4 Management ("LMS") Department. In addition to managing my own assigned accounts, I am also a
5 member of the LMS Quality Team, which involves reviewing procedures, system issues and
6 enhancements. I am also approved to train other persons to use the system. I am very familiar with
7 CSC's procedures for processing services received for its customers.

8 3. I review CSC's global list of services received regularly throughout each day to find
9 services that have been received for Cox. When a service for Cox is received by CSC and has been
10 logged in and scanned into CSC's Litigation Management System (hereinafter referred to as "LMS"),
11 I retrieve the document from the LMS, open it, and review each page of each service to insure that
12 data already extracted from the service and entered in the LMS is correct and to ascertain and enter
13 additional data, including nature of the case, sender details, response date, and document type. My
14 review includes checking for any apparent missing or skipped pages. The foregoing procedure is
15 CSC standard operating procedure and it is my custom and practice to follow it in connection with
16 each service I review.

17 4. On June 27, 2008, I noted that Document #4176215 had been logged in as a service
18 for Cox. I opened and reviewed the document as described above, verifying and logging in the
19 necessary information. The service consisted of three pages, a two page letter addressed to Labor and
20 Workforce Development Agency Re: *Arman Lassiter v. CoxCom, Inc.* ("Lassiter"), and a page
21 addressed to CoxCom, Inc. c/o Lawyers Incorporating Service on which the following notation
22 appeared: "Letter re 2699 Complaint".

23 5. At intervals throughout June 27, 2008, I looked for services for Cox on CSC's LMS.
24 The letter to the Labor and Workforce Development agency and page addressed to CoxCom, Inc. was
25 the only service that was logged into CSC's system for Cox on June 27, 2006 for this case.

26 6. Following my review of the service, at 5:19 p.m. EDT on June 27, 2008, an
27 automated email was generated to Catherine Capotosto, Ms. Vickie Diamond, Ms. Sharron Vines,
28 James Demetry, Timothy O'Rourke Esq., Peter Canfield Esq., and Stuart Young Esq. of Cox that

1 service of the Letter to the Labor and Workforce Development Agency and the accompanying note in
2 the Lassiter matter had been received.

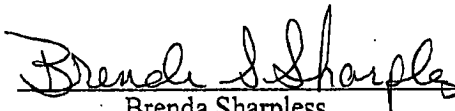
3 ///

4 7. There have been a total of three services received by CSC in the Lassiter matter. In
5 addition to the June 27, 2008 service described above, on June 30, 2008, what appears to be the same
6 letter was received via certified mail, and on July 31, 2008, a one page letter concerning receipt of a
7 notice of alleged Labor Code violations pursuant to Labor Code Section Board 2699, was received
8 via certified mail from Doug Hoffner, Undersecretary of the California Labor & Workforce
9 Development Agency.

10 8. As the person at CSC primarily responsible for processing services received for Cox,
11 I regularly check for services received for Cox throughout each business day. I have conducted such
12 checks of the LMS on a daily basis (excluding holidays and weekends) since June 27, 2008. If any
13 summons and complaint in the *Lassiter* matter had been logged or scanned in to CSC's LMS at any
14 time on or since June 27, 2008, I would be aware of it. No summons or complaint in the Lassiter
15 case has been logged or scanned in to the LMS on or since June 27, 2008. CSC has no record of such
16 a summons and complaint ever having been served on it as an agent for Cox. Based on my
17 familiarity with CSC's procedures for handling services, my awareness that CSC's policy and
18 practice is to log and scan in every service received on the day of its receipt, it is my opinion that no
19 summons and complaint in the Lassiter case have ever been served on CSC in its capacity as agent
20 for service of process for Cox or otherwise.

21 9. I have personal knowledge of the foregoing facts and if called as a witness could so
22 testify.

23 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
24 is true and correct. Executed this 11 day of August, 2008 at Cairo, Georgia.

25
26 
27 Brenda Sharpless
28

SEYFARTH SHAW LLP
 Thomas Kaufman (State Bar No. 177936)
 Laura Reatha Ford (State Bar No. 254751)
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Attorneys for Defendant COXCOM, INC

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARMAN LASSITER, individually and on behalf of
 other members of the general public similarly
 situated,

Plaintiff,

v.

COXCOM, INC., a Delaware Corporation; and
 DOES 1-50, inclusive,

Defendants.

Case No. 37-2008-00084510-CU-OE-CTL

**DECLARATION OF VICTORIA R.
 DIAMOND IN SUPPORT OF MOTION
 OF DEFENDANT COXCOM, INC. TO
 QUASH**

Date: Oct. 24, 2008
 Time: 10:30 a.m.
 Judge: Hon. Steven R. Denton
 Dept: 73

Complaint Filed: May 23, 2008

Victoria R. Diamond declares:

1. I am the Senior Paralegal, Litigation Employment Database Administrator. I am employed by Cox Enterprises, Inc. in Atlanta. I am the principal person responsible for receiving notifications that CoxCom, Inc. ("Cox") has been served with legal process from Corporation Services Company ("CSC"), Cox's designated agent for service of process in California.

**DECLARATION OF VICTORIA R. DIAMOND IN SUPPORT OF MOTION OF
 DEFENDANT COXCOM, INC. TO QUASH**

1 2. On June 27, 2008, I received an email from CSC advising me that Cox had been
2 served with a two page letter to the Labor and Workforce Development Agency accompanied by a
3 single sheet bearing Cox's name and CSC's address in the Lassiter matter. Exhibit B to Cox's Notice
4 of Lodgment is a true and correct copy of the letter, about the service of which CSC notified me on
5 June 27, 2008. Exhibit K to Cox's Notice of Lodgment is a true and correct copy of the notice I
6 received from CSC alerting me that the letter (Ex. B.) had been served.

7 3. Exhibit L is the only notice that I have received of any service on Cox on June 27,
8 2008, in the Lassiter matter. As of the date of this declaration, I have never received any notice from
9 any source that Cox has ever been served with a summons and/or complaint in the Lassiter matter. I
10 have personal knowledge of the foregoing facts and if called as a witness could so testify.

11 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
12 is true and correct. Executed this 13th day of August, 2008 at Atlanta, Georgia.

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15 Victoria R. Diamond
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CORPORATION SERVICE COMPANY

Notice of Service of Process

BZS / ALL
Transmittal Number: 5869772
Date Processed: 06/27/2008

Primary Contact: Catherine Capotosto
Cox Enterprises
975 F Street, NW
Suite 300
Washington, DC 20004

Copy of transmittal only provided to: Timothy O'Rourke Esq.
Robin Sangston Esq.
Stuart Young Esq.
Brenda Sharpless
Kristen Weathersby
Peter Canfield Esq.
Ms. Sharron Vines
James Demetry
Ms. Vicki Diamond

Entity:	CoxCom, Inc. Entity ID Number 1896480
Entity Served:	COXCOM, Inc.
Title of Action:	Arman Lassiter vs. COXCOM, Inc.
Document(s) Type:	Written Notice re: Violation of California Labor Code
Nature of Action:	Labor / Employment
Case Number:	
Jurisdiction Served:	California
Date Served on CSC:	06/27/2008
Answer or Appearance Due:	No answer date noted
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	William B. Sullivan 619-702-6760

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2862 | sop@cscinfo.com

1 **PROOF OF SERVICE BY MAIL**

2 I, Lorell Fleming, declare that: I am over the age of 18 years and not a party to the case; I am
3 employed in, or am a resident of, the County of San Diego, California, where mailing occurs; and my
business address is: 401 West A Street, Suite 1600, San Diego, California 92101.

4 I further declare that I am readily familiar with the business' practice for collection and
5 processing of correspondence for mailing with the United States Postal Service; and that the
correspondence shall be deposited with the United States Postal Service this same day in the ordinary
course of business.

6 I served the following document(s): **DEFENDANT COXCOM, INC.'S NOTICE OF**
7 **MOTION AND MOTION TO QUASH SERVICE OF SUMMONS; DEFENDANT COXCOM,**
8 **INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION**
9 **TO QUASH SERVICE OF SUMMONS; and NOTICE OF LODGMENT OF**
placing a true copy of each document in a separate envelope addressed to each addressee,
respectively, as follows:

10 **Alison M. Miceli, Esq.**
11 **Sullivan & Christiansi LLP**
12 **2330 Third Avenue**
San Diego, California 92101

13 I then sealed each envelope and, with postage thereon fully prepaid,

14 ☐ I deposited each in the United States Postal Service at San Diego, CA.

15 ☒ I placed each for deposit in the United States Postal Service, this same day, at my business
16 address shown above, following ordinary business practices.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

18
19 Dated: Aug. 14, 2008

Lorell Fleming

20 Lorell Fleming
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1
PROOF OF SERVICE BY MAIL

1 FERRIS & BRITTON
A Professional Corporation
2 Christopher Q. Britton (State Bar No. 56623)
W. Lee Biddle (State Bar No. 217128)
3 401 West A Street, Suite 1600
San Diego, CA 92101
4 Telephone: (619) 233-3131
Facsimile: (619) 232-9316
5 e-mail; cbritton@ferrisbritton.com
lbiddle@ferrisbritton.com
6

7 SEYFARTH SHAW LLP
Thomas Kaufman (State Bar No. 177936)
8 Laura Reathafor (State Bar No. 254751)
2029 Century Park East, Suite 3300
9 Los Angeles, California 90067-3063
Telephone: (310) 277-7200
10 Facsimile: (310) 201-5219
e-mail: tkaufman@seyfarth.com
11 lreathafor@seyfarth.com

12 Attorneys for Defendant CoxCom, Inc.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 ARMAN LASSITER, individually, and on behalf
of others similarly situated,

17 Plaintiff,

18 vs.

19 COXCOM, INC., and DOES 1 to 50,

20 Defendants.
21

Case No.

**DECLARATION OF SHARON SMITH IN
SUPPORT OF PETITION FOR
REMOVAL OF COXCOM, INC.**

22 Sharon Smith declares:

23 1. I have personal knowledge of the facts set forth in this declaration, and would and
24 could competently testify thereto if called upon to do so.

25 2. I am the Vice President for Human Resources for CoxCom, Inc.'s Orange
26 County/Palos Verdes cable system. I have been employed in this capacity at all times relevant to this
27
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CASE NO.: _____

Declaration of Sharon Smith in Support of Petition For Removal

1 declaration. In this capacity, I have access to payroll and employment records, which I reviewed in
2 conjunction with my staff to prepare this declaration.

3 3. From January 1, 2004 to the present, CoxCom's records indicate that 393 different
4 individuals have been employed as Field Service Representatives within the Orange County/Palos
5 Verde system.

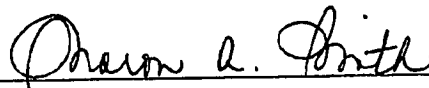
6 4. Within the Orange County/Palos Verde system, as of January 1, 2007, 170 people
7 were employed as Field Service Representatives. As of January 1, 2006, 144 people were employed
8 as Field Service Representatives. As of January 1, 2005, 150 people were employed as Field Service
9 Representatives. As of January 1, 2004, 147 people were employed as Field Service representatives.
10 Based on these figures, through the four years leading up to this complaint, CoxCom's Orange
11 County/ Palos Verde system employed an average of approximately 153 field service representatives
12 at any one time.

13 5. From January 1, 2004 to the present, the average hourly wage of employees occupying
14 the position of field service representatives in Orange County/Palos Verdes was approximately
15 \$21.65 per hour.

16 6. In 2007, CoxCom's records indicate that 22 field service representatives voluntarily
17 or involuntarily left the company. In 2006, the number of such employees was also 22. In 2005, the
18 number was 26. In 2004, the number was 18. So in the four years leading up to this Complaint,
19 approximately 88 field service representatives left the company. Others have transferred to different
20 positions within the company.

21 7. I am an officer of CoxCom, Inc. and I am familiar with the corporation's structure.
22 The corporate headquarters of CoxCom, Inc. is its offices located at 1440 Lake Hearn Drive, Atlanta,
23 Georgia.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct. Executed this 19 day of August, 2008, in Rancho Santa Margarita, California.

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CASE NO.: _____

Declaration of Sharon Smith in Support of Petition For Removal

Sharon Smith

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CASE NO.: _____

Declaration of Sharon Smith in Support of Petition For Removal

FERRIS & BRITTON
A Professional Corporation
Christopher Q. Britton (State Bar No. 56623)
W. Lee Biddle (State Bar No. 217128)
401 West A Street, Suite 1600
San Diego, CA 92101
Telephone: (619) 233-3131
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lbiddle@ferrisbritton.com

SEYFARTH SHAW LLP
Thomas Kaufman (State Bar No. 177936)
Laura Reathaforde (State Bar No. 254751)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
e-mail: tkaufman@seyfarth.com
lreathaforde@seyfarth.com

Attorneys for Defendant CoxCom, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARMAN LASSITER, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

COXCOM, INC., and DOES 1 to 50,

Defendants.

Case No.

**DECLARATION OF LINDA KAVANAGH
IN SUPPORT OF PETITION FOR
REMOVAL OF COXCOM, INC.**

Linda Kavanagh declares:

1. I have personal knowledge of the facts set forth in this declaration, and would and
could competently testify thereto if called upon to do so.

2. I am a Human Resources Director for CoxCom, Inc.'s San Diego area cable system. I
have been employed in this capacity at all times relevant to this declaration. In this capacity, I have

CASE NO.:

Declaration of Linda Kavanagh in Support of Petition For Removal

1 access to payroll and employment records, which I reviewed in conjunction with my staff in
2 preparation of this declaration.

3 3. From January 1, 2004 to the present, CoxCom's records indicate that 614 different
4 individuals have been employed as Field Service Representatives within the San Diego system.

5 4. Within the San Diego system, as of June 1, 2007, 313 people were employed as Field
6 Service Representatives. As of June 1, 2006, 321 people were employed as Field Service
7 Representatives. As of June 1, 2005, 326 people were employed as Field Service Representatives.
8 As of June 1, 2004, 313 people were employed as Field Service Representatives. Based on these
9 figures, through the four years leading up to this complaint, CoxCom's San Diego system employed
10 an average of approximately 318 field service representatives at any one time.

11 5. From January 1, 2004 to the present, the average hourly wage of employees occupying
12 the position of field service representatives in San Diego system was approximately \$20.75 per hour.

13 6. CoxCom's records indicate that from June 1, 2004 to the present, approximately 190
14 field service representatives have either voluntarily or involuntarily left the company.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct. Executed this 19 day of August, 2008, in San Diego, California.

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19 Linda Kavanagh

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CASE NO.:

Declaration of Linda Kavanagh In Support of Petition For Removal

FERRIS & BRITTON
A Professional Corporation
Christopher Q. Britton (State Bar No. 56623)
W. Lee Biddle (State Bar No. 217128)
401 West A Street, Suite 1600
San Diego, CA 92101
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Facsimile: (619) 232-9316
e-mail: cbritton@ferrisbritton.com
lbiddle@ferrisbritton.com

SEYFARTH SHAW LLP
Thomas Kaufman (State Bar No. 177936)
Laura Reathafor (State Bar No. 254751)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
e-mail: tkaufman@seyfarth.com
lreathafor@seyfarth.com

Attorneys for Defendant CoxCom, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARMAN LASSITER, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

COXCOM, INC., and DOES 1 to 50,

Defendants.

Case No.

**DECLARATION OF TERRI WILSON IN
SUPPORT OF PETITION FOR
REMOVAL OF COXCOM, INC.**

Terri Wilson declares:

1. I have personal knowledge of the facts set forth in this declaration, and would and could competently testify thereto if called upon to do so.

2. I am a Vice President of Human Resources for CoxCom, Inc.'s Santa Barbara area cable system. I have been employed in this capacity at all times relevant to this declaration. In this

CASE NO.: _____

Declaration of Terri Wilson in Support of Petition For Removal

1 capacity, I have access to payroll and employment records, which I reviewed in conjunction with my
2 staff in preparation of this declaration.

3 3. From June, 2004 to the present, CoxCom's records indicate that 93 different
4 individuals have been employed as Field Service Representatives within the Santa Barbara system.

5 4. From 2004 thru 2007, CoxCom's Santa Barbara system employed an average of
6 approximately 36 field service representatives at any one time.

7 5. From January 1, 2004 to the present, the average hourly wage of employees occupying
8 the position of field service representatives in Santa Barbara system was approximately \$19.15 per
9 hour.

10 6. CoxCom's records indicate that from June 1, 2004 to the present, approximately 33
11 field service representatives have either voluntarily or involuntarily left the company. Others may
12 have transferred to different positions within the company.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed this 20 day of August, 2008, in Santa Barbara, California.

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17 Terri Wilson
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CASE NO.: _____

Declaration of Terri Wilson in Support of Petition For Removal

1 FERRIS & BRITTON
A Professional Corporation
2 Christopher Q. Britton (State Bar No. 56623)
W. Lee Biddle (State Bar No. 217128)
3 401 West A Street, Suite 1600
San Diego, CA 92101
4 Telephone: (619) 233-3131
Facsimile: (619) 232-9316
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lbiddle@ferrisbritton.com
6

7 SEYFARTH SHAW LLP
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8 Laura Reathafor (State Bar No. 254751)
2029 Century Park East, Suite 3300
9 Los Angeles, California 90067-3063
Telephone: (310) 277-7200
10 Facsimile: (310) 201-5219
e-mail: tkaufman@seyfarth.com
11 lreathafor@seyfarth.com

12 Attorneys for Defendant CoxCom, Inc.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ARMAN LASSITER, individually and on behalf of
other members of the general public similarly
16 situated,

17 Plaintiff,

18 v.

19 COXCOM, INC., a Delaware Corporation; and
DOES 1-50, inclusive,

20 Defendants.
21
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Case No.

**DECLARATION OF JOSEPH FREEMAN
IN SUPPORT OF PETITION FOR
REMOVAL OF COXCOM, INC.**

Complaint Filed: May 23, 2008

23 Joseph Freeman declares:

24
25 1. I am an attorney, a member of the State Bar of Georgia, and am employed as
26 an attorney for Cox Communications, Inc. ("Cox") in Atlanta, Georgia. I am the attorney in Cox
27 Legal Department who is responsible for handling the claims being asserted against CoxCom, Inc.
28 by Arman Lassiter, including any litigation he may file against the Company.

2. On August 5, 2005, I received a letter, dated August 4th, from Plaintiff's counsel, Alison Miceli. A true and correct copy of this letter is attached as Exhibit A to this declaration.

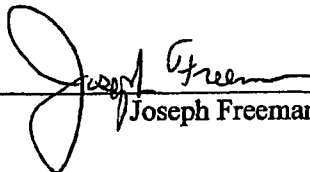
3. The letter asserted that CoxCom was in default in the State Court action because CoxCom had failed to answer the complaint within 30 days of service. Ms. Miceli threatened to take CoxCom's default in the State Court action if an answer was not filed by August 8th at noon.

4. Ms. Miceli's letter stated that CoxCom had been served on June 27, 2008. Insofar as I am aware, prior to my receipt of this letter, CoxCom had never been advised that it had been served the complaint. Because this case is my responsibility, it is my belief that if anyone at CoxCom had been informed the complaint had been served on CoxCom, this information would have been immediately communicated to me.

5. In the spring of this year, counsel for Plaintiff and CoxCom held discussions about the possible mediation of this matter. As part of those discussions, Plaintiff's counsel provided to CoxCom a mediation brief. In the mediation brief, Plaintiff claims that CoxCom's potential liability in this action is \$32,801,146.17, not inclusive of attorney fees and costs, and not inclusive of claims under Labor Code section 203. Attached to this declaration as Exhibit B is a true and correct copy of pages 21 to 23 of Plaintiff's mediation brief, which includes the section outlining Plaintiff's calculations of CoxCom's monetary liability.

6. I have personal knowledge of the foregoing facts and if called as a witness could so testify.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 20th day of August, 2008 at Atlanta, Georgia.


Joseph Freeman

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3035

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-388-0576
FACSIMILE 702-388-0572

August 4, 2008

Joseph M. Freeman, Esq.
COX COMMUNICATIONS, INC.
1400 Lake Hearn Drive
Atlanta, Georgia 30319

Via Facsimile Only (404) 843-5845

Re: Arman Lassiter v. COXCOM
Case No.: 69-6347

Dear Mr. Freeman:

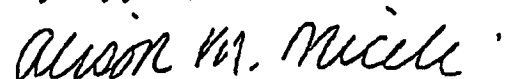
Please allow this correspondence to serve as a request for assistance and clarification in the above-referenced matter. Thank you for your assistance throughout this litigation.

As you are presumably aware, the Complaint of Mr. Lassiter, as well as a Labor Code section 2699, *et seq.* notification letter, were served on COXCOM's agent for service of process on June 27, 2008. We have recently received a LWDA "right to sue" letter, and are in the process of preparing to file an Amended Complaint. However, the time period for filing a response to the operative Complaint has passed, and we have yet to receive a responsive pleading. Further, the Court records do not list a response to the Complaint.

Given the above, we must respectfully demand that COXCOM file and serve an Answer to the operative Complaint no later than Friday, August 8, 2008; Noon. If we have not received proof of the filing and service of an Answer by that time, we will have no option but to prepare and file a Default as to COXCOM. Given your courtesy and assistance throughout the Mediation process, we are reluctant to do so. For that reason, please immediately comply with the above request.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Alison M. Miceli

bcc:

information to be included with each employee's pay-check.

5. Labor Code section 226.7 - This section requires compliant Meal and Rest Periods.
6. Labor Code section 510 - This section requires proper payment of all Overtime.
7. Labor Code section 512 - This section requires First and Second Meal Periods.
8. Labor Code section 1197.1 - This section applies to any employer or other person "who pays or causes to be paid to any employee a wage less than the minimum fixed" wage. Here, no amounts were provided for missed Meal and Rest Periods, and thus the minimum wage was not met.
9. Labor Code section 1199 - This section provides a \$100.00 fine, payable to the aggrieved employee, if any employer pays "a wage less than the minimum." Minimum Wage laws are applicable to *every hour worked*. Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314. As Defendant has failed to provide Wages, there is a Minimum Wage violation.

IV. MONETARY LIABILITY

As more specifically set forth below, the following is a summary of monetary liability COX will face if judgment is entered against them on a Class-wide basis:

A. MEAL PERIOD OMISSIONS AND LACK OF REQUIRED PAYMENT

i. 2004

750 (FST's) X 3 (missed Meal Periods a week) X \$25.00 (average Hourly rate) X 50 (weeks) = \$2,812,500.00

1 ii. 2005

2 750 (FST's) X 3 (missed Meal Periods a week) X \$25.00 (average Hourly
3 rate) X 50 (weeks) = \$2,812,500.00

4 iii. 2006

5 750 (FST's) X 3 (missed Meal Periods a week) X \$25.00 (average Hourly
6 rate) X 50 (weeks) = \$2,812,500.00

7 iv. 2007

8 750 (FST's) X 3 (missed Meal Periods a week) X \$25.00 (average Hourly
9 rate) X 50 (weeks) = \$2,812,500.00

10 Given the above, the liability for this issue totals: \$11,250,000.00.

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13 **B. LABOR CODE SECTION 221/2802 VIOLATIONS**

14 The liability for this issue is \$51,461.17.

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17 **C. "ROUNDING" VIOLATIONS**

18 The liability for this issue is \$1,500,000.00. This demand is based upon the
19 following formula:

- 20
- 21 • 6 (minutes lost from "rounding" each day) x 4 (workdays in week) x
 - 22 50 (workweeks in year) x 4 (years) = 4800 minutes
 - 23 • 4800 (minutes) divided by 60 (minutes in an hour)= 80 hours
 - 24 • 80(hours) x \$25.00 (average FST Hourly Rate)= \$2000.00
 - 25 • \$2,000.00 x 750(FST's) = \$1,500,000.00

26
27 To summarize, Plaintiff's demand is as follows:

28 **A. \$11,250,000.00 (Labor Code sections 226.7 and 512 violations)**

1 B. \$51,461.17 (Labor Code sections 221 and 2802 violations)

2 C. \$1,500,000.00 ("Rounding" violations)

3 D. \$20,000,000.00 (Labor Code section 226 violations)

4 Sub-Total: \$32,801,146.17

5 D. LABOR CODE SECTION 203 TBD

6 E. ATTORNEYS FEES AND COSTS TBD

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TOTAL: \$ TBD

Dated: 4/14/08

SULLIVAN & CHRISTIANI, LLP

Alison M. Miceli

William B. Sullivan,
Alison M. Miceli,
Attorneys for Claimant ARMAN
LASSITER

FERRIS & BRITTON
A Professional Corporation
Christopher Q. Britton (State Bar No. 56623)
W. Lee Biddle (State Bar No. 217128)
401 West A Street, Suite 1600
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Facsimile: (619) 232-9316
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Facsimile: (310) 201-5219
e-mail: tkaufman@seyfarth.com
lreathaford@seyfarth.com

Attorneys for Defendant CoxCom, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARMAN LASSITER, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

COXCOM, INC., and DOES 1 to 50,
Defendants.

Case No.

**DECLARATION OF CHRISTOPHER Q.
BRITTON IN SUPPORT OF PETITION
FOR REMOVAL OF COXCOM, INC.**

I, Christopher Q. Britton, declare:

1. I am an attorney, a member of the State Bar of California, and a partner in the law firm of Ferris & Britton, A.P.C., co-counsel for defendant CoxCom, Inc. in the above-captioned matter.

2. In my practice of law, I have been a part of dozens of cases involving plaintiff's

1 attorneys working on a contingency fee basis, including employment and consumer class actions.
2 I have also been retained as an expert witness and provided testimony on the reasonableness of
3 attorney fees in a consumer class action. In my experience, a class action counsel operating on a
4 contingency fee will typically seek attorney fees equal to or in excess of one-third of the total
5 recovery of the class.

6 3. I have personal knowledge of the foregoing facts and if called as a witness could so
7 testify.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed this 21st day of August, 2008, in San Diego, California.

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11 Christopher Q. Britton
12 Christopher Q. Britton
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LASSITER, ARMAN individually and on behalf of other members
of the general public similarly situated

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

'08 CV 1561 H NLS

(c) Attorney's (Firm Name, Address, and Telephone Number)

William Sullivan, Alison Miceli; Sullivan & Christiani, 2330 Third
venue, San Diego, CA 92101, (619) 702-6760

DEFENDANTS

COXCOM, INC., a Delaware Corporation; and DOES 1-50,
Inclusive

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorney Christopher Britton DEPUTY

Christopher Britton, W. Lee Biddle; Ferris & Britton, 401 W. A.
St. #1600, San Diego, CA 92101, (619) 233-3131

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6
- Citizen of Another State ☐ 2 ☐ 2 ☐ 2 ☐ 2 ☐ 2 ☐ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 ☐ 3 ☐ 3 ☐ 3 ☐ 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d) and 1441(a)

Brief description of cause:

Removal of class action complaint alleging wage and hour violations

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

32,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/21/2008

SIGNATURE OF ATTORNEY OF RECORD

Christopher Q. Britton

FOR OFFICE USE ONLY

RECEIPT # 154387 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

AC 8/22/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154387 - TC

August 22, 2008
16:08:01

Civ Fil Non-Pris

USAO #: 08CV1561

Judge...: MARILYN L HUFF

Amount..:

Check#: BC068142

\$350.00 CK

Total-> \$350.00

FROM: LASSITER, ARMAN
VS
COXCOM